

**STATEMENT OF MORGAN STANLEY
IN CONNECTION WITH THE SECURITIES AND EXCHANGE
COMMISSION'S
PUBLIC HEARING ON PROPOSED REGULATION NMS**

April 21, 2004

Morgan Stanley appreciates the opportunity to participate in the SEC's Public Hearing on Proposed Regulation NMS. Morgan Stanley as a broker represents clients ranging from individual investors to the largest institutions, and Morgan Stanley as a dealer commits the firm's capital trading in virtually every market and every instrument. Throughout our organization, our philosophy centers on putting the client first. Against this backdrop, we are deeply interested in all efforts to enhance the efficiency and fairness of the U.S. equity markets, for the benefit of all market participants. We approach this topic without a bias toward promoting any particular exchange or market center, and without regard to the impact of any proposed regulations on any particular exchange or market center. We believe that open competition will bring success to those market centers that offer superior services in the most cost efficient manner, and as a result will benefit all market participants, collectively.

Conceptually, Morgan Stanley believes that competition among *orders* on an inter-market basis is the most effective means of achieving efficiency and best execution. We recognize, however, the impact that decimalization has had on trading efficiencies, as well as the practical realities that this approach faces. Therefore, we believe an attractive alternative solution, certainly attainable, is a national market system in which participants are economically induced to compete vigorously for market share on a level playing field.

Dimensions of competition in this system would include cost, ease of use, degree of automation/speed, order interaction model, realizable liquidity, quality of market data and anonymity.

To our minds, therefore, the overarching objective of this enhanced national market system should be the use of state-of-the-art means to promote higher standards of best execution. The national market system should ensure the immediate accessibility of better prices on away markets, which requires recognition that speed is an important element in obtaining the best execution. Ultimately, the customer's freedom of choice should be respected. For each individual order, the customer should be the final arbiter of what constitutes best execution, and which means or venues accomplish these objectives.

We believe the SEC's proposed Regulation NMS gets us closer to these goals. A certain level of trade-through protection should be available to those placing market and marketable limit orders who wish to avail themselves of it, provided clear and rigorous standards of accessibility and response are established and strictly enforced. However, the potential exists for trade-through protection to hamper the ability of certain investors to obtain best execution; in this context "best execution" may refer to achieving a sizable overall transaction objective while minimizing completion risk. For example, given the real possibility that a market center, whether a self-appointed or certified "fast" market, were to repeatedly react slowly to incoming commitments, informed market participants need the ability to opt-out of trade-through protection, or else possibly forego certainty of execution at a slightly inferior price. In the age of decimals, more flexibility in allowing such investors to choose execution methods is critical. While we cannot think of many

circumstances in which the typical individual investor would reasonably wish to opt-out of the protection, other investors, including institutions and other “self-directed” professional traders who value anonymity or speed over incremental penny improvements, should be allowed to determine how much protection they want. The implementation of such a decision needs to be accommodated in a manner that realistically recognizes the way the markets operate.

We applaud the SEC’s efforts to enhance the fairness and competitiveness of U.S. equity markets, and look forward to working with the staff and members of the Commission in the months ahead, and again thank the SEC for the opportunity to participate in today’s hearing.