October 18, 2004

The Honorable William H. Donaldson
Chairman
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

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

Dear Chairman Donaldson:

I am writing to express my concern about the SEC's Regulation NMS proposal and its impact on the millions of investors that I serve as New York State Comptroller.

As Comptroller, I serve as New York State's chief fiscal officer and I am charged with operating the Statewide Retirement System. In this role, I represent the interests of millions of individual investors and have a fiduciary responsibility to ensure that their retirement funds are managed properly.

Given this responsibility, I have a significant interest in the Regulation NMS proposal, particularly because of its potential effect on the retirement funds of millions of New Yorkers. I am most concerned about the proposed changes to the trade-through rule, which is designed to ensure that investors receive the best prices for their trades.

While I applaud the SEC's efforts to modernize the rules that govern U.S. capital markets to keep up with changing technology and new electronic markets, I have strong reservations about removing the best price protection that the trade-through rule provides. In today's market, speed of execution is an important factor that can affect price. The SEC has recognized this fact with the Commission's proposed fast market/slow market exception to the trade-through rule, which I support. However, when markets have comparable speed of execution, I see absolutely no public policy rationale for anyone to be allowed to "opt-out" of executing a trade at the best price. I am concerned that intermediaries seeking to "opt-out" of the best price, notwithstanding comparable speed of execution, may be serving their own interests ahead of those investors that they purport to represent.

The Consumer Federation of America and CIEBA, the organization for fiduciaries of pension funds, both agree that an “opt out” from best price when automatic electronic execution is available is not sound public policy and does not protect individual investors.

Furthermore, a recent AARP survey showed that its membership favored price over speed in the trading of their stocks by over 2 to 1. Essentially, when people look at their IRA or 401(k) accounts, they are not concerned about how fast each trade occurred, they are concerned about how much their accounts grew and whether or not each trade received the best price possible in the market.

At a time when Congress and the SEC have been working diligently to protect investors by tightening rules on corporate governance, accounting, and mutual fund trading, I find it troubling that we would consider loosening the rules pertaining to best price in the national market system. We need to be closing loopholes, not creating them.

I am convinced that if the SEC considers investor protection first, you will conclude as I have that an “opt-out” provision is not in the best interests of the investors that both you and I serve.

Sincerely,

Alan G. Hevesi

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AGH:jmg

cc: Secretary Jonathan G. Katz