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Re: File No. S7 - 10 - 04

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June 24, 2004

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Dear Mr. Katz:

This letter is in response to the Commission's call for comments on the items contained in proposed "Regulation NMS".

Introduction

The Alliance of Floor Brokers (AFB) is a trade group that represents the membership of the New York Stock Exchange (NYSE). As the largest, oldest and most diverse of the constituent organizations at the NYSE, the AFB has traditionally taken a broad approach to the various issues facing the financial services industry. With over 800 members active in the organization, the AFB represents, we believe, the largest sampling of the overall NYSE community.

Overview

The proposals in the discussion document of Reg NMS constitute no simple rule change. If the majority of the items in these 346 pages are implemented, they will be likely to produce the most sweeping changes across U.S. equity markets in decades. No equity-trading arena is bound to be untouched by these proposals.

Given the gravity and enormity of the potential consequences, the AFB has considered, discussed and debated each of the suggestions carefully and repeatedly. The results of that process are contained in these comments.

Genesis of Reg NMS

In order to best understand the issues that prompted the proposals, we examined them both individually and as a mosaic.

Here is how we viewed and listed the objectives: The proposals seek to limit access fees and eliminate their initiative to "lock markets". The proposals also seek to promote exposure of limit orders. Further, they also seek to inhibit sub-penny trading. Finally, they seek to promote greater interaction among markets but if such interaction proved burdensome, a market might be allowed to "opt out".

When we viewed these objectives collectively we were struck with a sense of deja vu. These were the issues that have been discussed and debated for months in a particular trading venue - the "unlisted" trading arenas. Access fees had even become the source of litigation we believe.

Most of the objectives discussed are already achieved to a great degree within listed markets. Limit orders are exposed. Separate markets interact through the Intermarket Trading System (ITS), which has a prohibition on "locking markets". To date, sub-penny trading has not been a serious issue in listed trading.

Viewed from this perspective, the AFB assumed the Commission may have begun to address these "unlisted" issues and then determined to apply the proposal across all markets to develop a national standard.

We framed our comments with the "national" in mind.

Intermarket Trading System

The NMS proposal makes several references to the existing ITS system. These references imply, at least by our reading, that the Commission envisions future linkages will be through means other than through ITS. ITS was the outgrowth of the early debate and discussion regarding a National Market System in the 1970's. Faced with the impracticality of suggestions such as a Consolidated Limit Order Book (CLOB) or a National Limit Order Information System (LOIS) the venues trading "listed securities" developed the ITS about a quarter of a century ago. No such market interface was ever evolved for "unlisted securities".

That ITS might be jettisoned seems somewhat ironic. While certainly not perfect, ITS has achieved several of the goals listed in the new NMS proposal. As noted above, ITS promotes interaction of orders among competing marketplaces, while inhibiting locking markets and/or trading at inferior prices. It has existing processes to resolve inter-market disputes. It also prevents trading in sub-penny increments.

The NMS proposal appears unenthusiastic about ITS on two fronts. The first is speed in which reaction time can stretch to 30 seconds. The second is its structural flexibility. The ITS plan, somewhat like the UN Security Council, grants virtual veto powers to ITS participants.

Perhaps, these problems concerning ITS should be addressed before it is determined to replace it with some, as yet unspecified, routing methodology or mechanism.

Fast Markets and Best Prices

The Commission's Release makes much of market speed in its outline of NMS proposals. It even goes so far as to suggest two concepts of regulation based on fast markets versus slow markets.

The Commission does not appear to endorse speed as a capacity consideration but rather as an alternative to better prices. It even appears to suggest that there would be ample reason to forego a visibly better or more advantageous price for one seemingly less advantageous in a presumably faster market. Yet the proponents of speed at any cost do not appear to cite any studies or to offer any statistical work done by any credible source to demonstrate the cost burden or disadvantage of the less speedy execution.

Lest we be misunderstood, the AFB is not against getting things done faster. But we question the premise that the very function of speed somehow insures a better or fairer price. In fact the concept that the less speedy order gets the less favorable price is somewhat counter-intuitive.

Most equity markets are fairly dynamic. Some might say they have a natural, inherent volatility. They tend to change direction with some frequency.

Therefore, the less speedy order will often <u>benefit</u> from a market shift. And, even if the market were uni-directional for a period of time, the less speedy order would always be advantaged on the contra-side of the move (sellers into an up market; buyers into a falling market).

We do not propose that speed is inherently negative to getting best price. Rather, we only suggest that lacking some unseen study, it would intuitively appear that the speedier order may be advantaged 50% of the time and the less speedy order is advantaged 50% of the time.

As the academics might suggest, speed seems to be a zero sum game where orders are concerned. It is hardly a reason to induce someone to forego a visible, more advantageous, price for some amorphous speed "advantaged" price.

Speed of execution does not appear to represent a cost to investors. Yet this assertion has been repeated often enough by a vocal minority to become a kind of urban myth - like alligators in the sewers. The alleged alligators are not there any more than are the alleged costs attributed to a less speedy order.

Almost ironically, while we could find no study detailing the precise cost benefit of speed (auto-ex) versus auction, there are arguments that speed may pose a cost burden. At the very least, recently released studies suggest that possibility. Here's what we found in one (floor trades refers to broker handled versus PER trades which are auto-executed).

> Overall, floor trades have a lower realized half-spread than PER trades (-3.06 bps versus 4.43bps). This finding holds for other measures of execution costs as well and is consistent across all order-size categories. The light our findings shed on the value of intermediation in security markets also has implications for automated trading systems.[1]

This study was conducted on the American Stock Exchange. Nevertheless, as indicated in the final sentence above, the authors suggest a similar benefit might occur across markets. Auto-ex appears to *add* a cost burden.

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[1]Handa, Schwartz and Tiwari, 4/2004 "The Economic Value of a Trading Floor: Evidence from the American Stock Exchange" Journal of Business (Abstract)

We would argue that brokers at the point of sale are uniquely positioned to engage in superior price discovery on behalf of their clients. They are able to react instantaneously to changes in market conditions and through the auction mechanism are able to make informed decisions that save their customers substantial sums of money, while at the same time, enhancing the efficiency of our capital markets.

The AFB is concerned that the NMS proposal's emphasis on speed as a primary differentiation for order handling obligations will result in fewer choices rather than more for clients. Recent comments by SEC officials have indirectly acknowledged this dilemma by considering the possibility of defining automated markets on a quote-by-quote basis, rather than on an overall marketplace basis. These comments seem to indicate an awareness of the great benefits of the auction process coupled with a desire to preserve those benefits. We applaud that awareness and are resolute in our belief that all steps taken to evolve our markets should be taken at a deliberate pace, with time to measure the effect of changes, rather than by a wholesale approach that may make it extremely difficult to undue any unintentionally damaging alterations.

Specifically, by giving more latitude to those markets deemed "fast" (opt out, etc.) the Commission will give every marketplace a very strong inducement to shift to automated execution of all orders. Since it is unlikely that any marketplace, be it ECN or auction based, would be able to run contemporaneous, discrete, parallel markets, clients will find only a single option: automatic execution against the NBBO.

This option has been available for some time through the various ECN's. Yet, the vast majority of clients and volume have chosen alternative options. The NYSE has offered a "speed option" for years. Nearly 75% of all NYSE orders are qualified to use the auto-ex "Speed Option" but only 6% chose to do so. That's a pretty significant indication of public preference. For the commission to make this choice essentially by fiat is not to be taken lightly.

We urge the Commission to consider this point carefully, lest, rather than encouraging marketplace competition, we end it with a one size fits all homogeneity.

The Uncertainty of "Certainty"

Perhaps under the onslaught of the negative response that the speed versus best price argument has engendered, its proponents have sought to reshape their argument. They say their goal is not speed but rather certainty.

This is simply substituting one fallacy for another.

In a dynamic marketplace no bid or offer is chiseled in stone. The person who is offering may cancel or change his or her offer. Equally, other buyers may reach for the offer a nano-second earlier than you do.

Given this dynamism, a displayed bid or offer is merely an opportunity and not a certainty whether the markets are deemed slow or fast.

No ECN or automated market could contend that by sending a buy order you would be certain to buy it at the price shown on the screen when you hit the button.

Yet proponents not only allude to "certainty" as a benefit of speed, they use it as an argument to trade through or opt out. Here they are building fallacy upon fallacy.

In simple terms their contention may be outlined in a brief example.

Presume - there are 1000 shares of XYZ offered at $20.20 in one market. There are another 1000 XYZ offered on an ECN at $20.22. "Speed" proponents seek to skip, or trade through, the better offer in order to get a quick "certain" execution at $20.22.

As previously noted, the offer at $20.22 is no more <u>certain</u> than the offer at $20.20. Either may be available. Neither may be available. One or the other may be available.

Neither is certain.

The only thing <u>certain</u> is that the $20.22 represents a visibly inferior price.

<u>Benefits Of Price Discovery</u>

The AFB is concerned that the SEC, by providing exemptions from trade through obligations for automated markets, is overlooking many of the benefits provided by an auction market where orders are managed by human beings at the point of sale. Price discovery is a dynamic process that is critical to the efficient functioning of any marketplace. The ability to price and trade large blocks of stock quickly and without unnecessary impediments has been an important part of the NYSE's value proposition over the years.

It is clear that the practice of trading equities in one-cent increments has created unanticipated problems by masking available liquidity and causing a reduction in both the number and quality of limit orders. Participants are currently discouraged from posting sizable limit orders by the actions of some investors who utilize computerized strategies to detect and "penny jump" those orders. The result is that the NBBO tends to be for small amounts of stock and limit orders have been driven off of the books, making it more costly to locate larger sources of liquidity. Algorithmic and quantitative strategies are being utilized to help participants adjust to this new world, yet ironically, these adaptive strategies are themselves exacerbating the very problems they have been designed to cope with. It is highly likely that an aggressively drawn trade through exemption for automated markets will worsen these problems by advantaging small quantitatively generated orders.

Brokers at the point of sale have the ability to represent sizable orders without displaying large bids and offers continuously and in effect, act as a smart reserve book. Their behavior is dynamic and responsive to market conditions. Perhaps most importantly, they have the ability when discovering sizable contra interest to quickly and efficiently negotiate the trading of large blocks on the trading floor itself without damaging information leakage. The dramatic rise of direct access trading between the buy-side and members of the trading floor is a highly visible indication of the benefits of floor based trading.

While the AFB is supportive of efforts by the NYSE to improve efficiency and to allow greater automated access to the point of sale, we caution the SEC to take care when implementing rules that will rigidly define automated markets. We feel that a structure that allows for human interaction within the context of an electronically accessible market is an ideal solution. We are concerned that currently contemplated regulations have the potential to irreversibly damage existing market structure and thereby lose the benefits of the auction market forever. We are aware of the difficulty of successfully designing a hybrid market and are hopeful that the SEC allows us the latitude to implement rule changes in a deliberate and well thought out manner. It would be a tragic mistake to take any actions that could potentially raise the cost of capital formation in the United States of America

Trade Through

The AFB's perception of the trade through rule corresponds to the one outlined in the NMS Proposal:

> The Commission believes there is value in having a rule that provides a measure of price protection for limit orders across markets, if the rule is designed to accommodate the current structure of our NMS. Like the current ITS trade-through rule, a Commission trade-through rule would encourage the use of limit orders, aggressive quoting and other interaction and help preserve investors' expectation that their orders will be executed at the best displayed price. The Commission therefore is proposing its own trade-through rule that would apply not only to the trading of NYSE and Amex securities but also to the trading of Nasdaq securities.

The Commission's proposed trade-through rule would require markets, with regard to the trading of NMS stocks - NYSE, Amex, and Nasdaq securities - to establish, maintain and enforce policies and procedures reasonably designed to prevent the execution of trade-throughs in their markets. [2]

We could not have said it any better ourselves. Finally those protections will be offered to clients trading in Nasdaq securities. As we noted in our ITS comments above, the only concern is that it took so long.

This is a large step in moving toward a true National Market System.

The AFB believes the two "exceptions" proposed to the above rule are contrary to the rule's intent and would be counter-productive if implemented.

While there may be occasional need for "exception" such as in a paired trade in an arbitrage, too broad an exception would invite game playing. We believe any exceptions should be restricted and narrowly defined.

The second exception deals with "opt out".

[2] SEC, NMS Proposal 2/2004 Page 34

Opt Out

The AFB is troubled by the potential "opt out" provision on several levels.

First, it appears to fly in the face of almost every discussion of order protection in the original NMS debates. From CLOB to LOIS and all the other iterations up to ITS, the primary goal was to prohibit trading through the best price. Now, it appears, we are not only ready to sanctify the concept but to codify it.

Secondly, the proposal cautions brokers that they still are bound by their obligation to the client.

> "The Commission emphasizes that the proposed trade-through rule, including the automated market exception, in no way alters or lessens a broker-dealer's duty to achieve best execution for its customers' orders. A broker-dealer still must seek the most advantageous terms. .....Moreover, broker-dealers that execute customer orders internally would continue to be evaluated against the best bid and offer (or better bid or offer, if available) for best execution purposes, regardless of whether these orders were executed automatically or manually. The proposed trade-through rule does not justify a market maker executing retail orders internally at prices inferior to the best quote, even if executed automatically." [3]

The proposal further extends this responsibility even to introducing brokers who don't actually execute client orders.

> See Section (b) (8) of proposed 611. A broker-dealer sending orders to another broker-dealer with whom it has a relationship (e.g. an introducing/executing broker relationship) would either be acting for its own account or acting on behalf of the account of a customer. In either instance, the broker-dealer receiving the orders would be required to obtain consent from the sending broker-dealer with respect to each order prior to treating an order as one that as "opted out." If the sending broker-dealer were acting on behalf of a customer, it would have to obtain informed consent from its customer prior to sending an order to another broker-dealer for execution. [4]

The NMS document reinforces this responsibility when it discusses the Access question.

> Guided by little more than the fiduciary duty of best execution, a broker must seek the most favorable terms for a customer's transaction reasonably available under the circumstances. [5]

Should not the "fiduciary duty" to seek best execution be extended to fiduciaries other than brokers? Should not the hedge funds, pension funds, mutual funds and other fiduciaries also share this responsibility for informed consent from their clients?

[3] Reg. NMS Proposal, Page 45
[4] Reg. NMS Proposal, Page 47 Footnote Note 71
[5] Reg. NMS Proposal Page 103, citing Footnote 133 (below).

Order Execution Obligations, Securities Exchange Act Release No. 37619A at 50 (September 6, 1996), 16 FR 48290 (September 12, 1996); see also In the Matter of the Application of Robert Bruce Orkin, Securities Exchange Act Release No. 32035 at fn. 22 (March 23, 1993).

The AFB is concerned that frequent "opt out" will be fodder for potential class action suits in today's litigious society.

On the one hand the opt out for some de minimis amount, like three cents or five cents sounds somewhat inconsequential. But as we learned in several fund related settlements on late trading, minimal displacement repeated many times can be far from minimal.

The NMS proposal contends that the post-penny contraction in quote spreads has produced a major saving to investors.

> Since November 2001, for example (the first month for which all markets were required to disclose their execution quality), the effective spreads paid by investors seeking liquidity in the NMS have decline steadily across all markets by a cumulative total of more than 40%.[2] In November 2003 alone, these reduced spreads resulted in cumulative investor savings of more than $340 million, or more than $4.0 billion on an annualized basis. [6]

The AFB suggests that allowing an opt out of three to five cents from the NBBO is tantamount to re-opening the quote spreads to pre-contraction levels. Using the extrapolation presented above that would provide extra costs to investors in the billions of dollars.

Additionally, the AFB is concerned that the Proposal bases some of the assumptions on de minimis opt out on the experience with Exchange Traded Funds (ETF's). ETF's are not stocks. Like options they are tethered products whose value is anchored to some underlying product. In the case of ETF's that is an index. The ETF can never stray very far from the index to which it is tethered. Stocks have no such tether.

It is widely agreed that one of the measures of a healthy market is a robust limit order book. By encouraging the posting of limit orders, exchanges and other order execution facilities add depth and liquidity to their markets. Individual investors, who often trade without access to the tools of professional investors, are significant users of limit orders.

The AFB believes that by allowing sophisticated institutional participants to bypass limit orders posted by small investors, Reg NMS has the potential to harm individual investor rights. An important component of the public's faith in our capital markets is the understanding that small investors are able to interact with institutional investors on a level playing field. A regulation that allows institutions to sell stock to others at prices that are below what an individual public investor is willing to pay is likely to undermine faith in our market system and is likely decrease liquidity by driving small public orders off of the books of our marketplaces. While some may view this as a desired effect, the AFB strongly feels that the rights of small investors are sacrosanct and should not be subordinated to the profit motives of large corporate interests.

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[6]Reg NMS Proposal, Page 9, citing Footnote 2 (below)

This 40% reduction in spreads since November 2001 is in addition to the reduction in spreads that occurred immediately upon the initiation of trading in penny increments in the first part of 2001. See infra, text accompanying notes 197-199.

In sum, the opt out provision is contrary to the original NMS goals, provides no safe harbor for fiduciaries and may increase costs to investors. It is, quite simply, bad public policy.

Therefore, we strongly urge the SEC to unequivocally drop "Opt Out".

Access

In many ways the AFB finds that the topics of access and access fees are the most vexing of the proposals. That is because they are complex, impact all markets and bring into question the very value of membership in an exchange.

In order to clarify our concerns we will discuss some of the component parts of the access question.

We presume the access proposals evolved from two different considerations.

In the last several years, ATS's and ECN's began to evolve in the wake of the NASD market makers settlement. The business model of the ECN's was based upon access fees. If someone entered an ECN to hit a bid or take an offer, they were charged an access fee. A portion of that fee was retained by the ECN and a portion was paid to the person whose limit order had attracted the accesser. This was said to be a reward to the liquidity supplier (person who posted the limit order).

These access fees were somewhat controversial from their inception. Some non-participants in an ECN claimed they were being entrapped into an invisible surcharge by trading with an ECN. The disputes grew contentious enough that in some cases, lawsuits were pressed.

Competitors of the ECN have contended the reward to the liquidity provider was simply another version of payment for order flow.

Perhaps the most nettlesome problem was the way access fees began to affect market interaction.

Since you could only get an access fee if someone reached out to you, people began locking markets. Rather than losing the potential reward by hitting someone else's bid, sellers would offer at the bid hoping to induce the buyer to reach out and incur the fee that would reward the seller.

Conversely, non-ECN participants were loath to hit an ECN bid, which might cost them a surcharge. So, they too tended to lock markets rather than trade hoping to induce their opposite onto their turf. Hardly a fluid market with all this frozen liquidity.

In order to lessen the incentive to lock markets and induce more ready interaction, the Proposal seeks to limit access fees to some lower level. That may work to alleviate the current locking problems but it raises other issues.

Currently, the NYSE and regional exchanges do not charge any access fees. They charge transaction fees of various forms to their members. Non-member broker/dealers can currently access NBBO orders through ITS which has no access charge.

We assume the second consideration that led to the question of access fees was - how might markets interact in a non-ITS environment. The proposal alludes to some as yet unspecified version of smart routing or maybe several versions. This proposed access might incur an access fee we presume.

We do not know if such a proposal might result in a net increase or decrease in NYSE fee revenue. We do believe, however, that it might alter the concept and value of membership.

In an organization, such as a stock exchange or the NASD, the members agree to abide by various structured rules, procedures and standards. They agree to assume these burdens and their attachments (audits, regulatory review, record keeping, etc.) in order to set a standard that clients will find attractive. The members and their organizations may then be disciplined for failure to adhere to these standards and/or procedural guidelines.

This compact among the members forms the basis of the current model of self-regulation. Data is constantly monitored, collected and reviewed. Client complaints and questions are addressed. Inquires from regulators and legislators are answered. A certain standard is maintained.

If, as the Proposal suggests, access is given to any and all, at some fixed fee set by the government, in a manner equal to that available to members the incentive to membership is greatly diminished. Why would anyone bear the burden of the rules and procedures of an exchange compact when they can readily access the liquidity attracted by that compact without membership.

The AFB believes total unrestricted access at a fee set by the government would be erosive and potentially injurious to the concept of self-regulation.

In today's environment of aggressively negotiated rates, anyone can achieve access at minimal cost through any of the member firms of an exchange. This would avoid jeopardizing the self-regulatory structure since the executing firms would have to remain in compliance with the existing rules and procedures. They, in turn, hold their "client" to that same standard.

In sum, the AFB is troubled by the NMS proposal on access fees. By forcing SROs to grant essentially open and cost free access to competitors and others, the proposal places an undue burden on the members who actually bear the cost of maintaining those organizations. It is widely agreed that the investing public benefits greatly from the oversight of organizations such as the NYSE and the NASD. These organizations are costly to maintain and operate, but members readily incur the expense and bear the burdens because of the value that the investing public associates with membership. The result is that a significant public good is created. By allowing competitors to have access identical to that available to members without any limit disincents membership in those SRO's. The likely result will be, at best, organizations that are less effective, with far fewer members and an investing public faced with far more free wheeling landscape with which to contend. At worst it may result in the dissembling of all SRO's and thus, de facto, cause an unwanted and unintended change in the structure and effectiveness of securities regulation in the U.S.

We strongly urge the SEC to carefully reconsider this portion of its proposal in light of these consequences.

Market Data

Reg. NMS proposes to change both the kind of data that would produce revenue and the formula for distributing those revenues.

In simple terms current revenue is distributed to the various trading venues in direct proportion to the number of their trades, which appear on the Consolidated Tape, regardless of the size of the trade.

We understand the new proposal to be somewhat more complicated. The formulae would include variables such as "the square root of the dollar volume of trading in each security".[7]

We shall leave the structure and validity of the formulae to others and simply discuss the concepts.

Each security in a plan would be assigned a profile or weighting. Based on the profile each security would be assigned a designated portion of the aggregate revenues of the plan.

Those revenues will be distributed among the various participants based upon three items: number of trades, number of times you have best quote and the frequency of times you improve the NBBO. All of these calculations will be based on the activity in each of the individual weighted securities.

We presume there are two goals to this re-calculating. First would be to provide initiatives for the order exposure, quoting and execution goals contained in the proposal. That appears quite logical.

The second goal appears to be to end the kind of "gaming" that has occasionally arisen in the current plan (shredding orders, wash sales and print facilities, e.g.). Ending the gaming and its distortions and negative results is also a logical and laudable goal.

Unfortunately, the AFB fears that any formula will ultimately be "gamed". We believe the only way to prevent "gaming" and poaching is to deregulate the system. Let competition police the process. Additionally, by dissolving the consortiums themselves and allowing independent data submission by each exchange, substantial cost benefit would be available to the public.

It is the AFB's position that the current proposal regarding market data fails to acknowledge the basic inequity of the present CTA agreement. Purchasers of market data are currently forced to buy this information from all participants in CTA without distinction. While we expect that fiduciaries will continue to access market data from all market centers, it is clear that there are many consumers who do not require that level of detail. These non-fiduciary consumers may believe that the purchase of a portion of the available data will be sufficient to satisfy their limited needs. We feel it would be appropriate for the SEC to mandate that the current CTA agreement be abolished and that consumers may purchase data from any vendor of their choosing. Free market forces, in conjunction with SEC oversight, should result in an equitably and efficiently priced market for this information.

[7]NMS Proposal Security Income Allocation - Page 206

Sub-Penny Trading Increments

The AFB endorses the NMS Proposal's intention to limit trading increments to pennies. While such a proposition may be held unduly restrictive to some, the AFB believes that, in today's environment, sub-penny trading would be counter-productive.

Given the previously noted litigious nature of society (especially on Wall Street), a trading arena might opt to offer trading in ever decreasing increments. The hope would be to induce order aggregators, under threat of suit, to send orders to any arena that might offer potential price improvement in these ever-decreasing fractions of a penny.

While we understand and fully endorse the restrictions on sub-penny trading, we suspect it will have a finite life, since the search for price improvement, even in sub-sets is a natural consequence of free markets.

Conclusion

The AFB is grateful to have had this opportunity to comment on the NMS proposals. As practitioners, we know first hand the added value that the agency/auction model can provide to the public and are pleased to be able to bring our viewpoint to bear upon the debate. We recognize that our markets can and must evolve and we are delighted to make a positive contribution to that evolution.

The AFB believes that the Reg. NMS proposals published on February 26, 2004 have far reaching implications often beyond the stated goals. While many of the goals appear logical or even laudable in their presentation, we are concerned that these rule implementations, as presented, could lead to unintended and negative results. We believe that even with the most laudable of goals it is best to heed the caveat of Hippocrates - "First, do no harm."

Challenges and potential changes are daily factors in all free markets. But, in a free market, challenges and changes are usually driven by customer demand. One of our concerns is that the Commission, by responding to a vocal minority, might, albeit with the best of intentions, take actions that could result in unintended, even negative, consequences for the majority of the participants in American capital markets.

The AFB endorses the extension of the trade through rule to the unlisted trading arena. It is long overdue. We also endorse the ban on sub-penny trading. It will provide a welcome respite to markets already grappling with the sudden shift to 100 price points, which has distorted both the perception of liquidity and even trading relationships. We fear, however, that these proposals will be challenged, perhaps even legally, by some. Nonetheless, we endorse the effort.

The AFB agrees with the SEC that the distribution of market data revenues has been the subject of posturing bordering on data manipulation. We applaud the SEC's attempt to redress this problem. We believe, however, that releasing the pricing to marketplace driven solutions is the simple and correct solution.

On the access fee issue, the AFB recognizes the Commission's desire to resolve the connection between access fees and repetitively locked markets. However, we are concerned, as previously noted, that well-intentioned changes may drastically change the concept of member organizations.

The AFB believes that the "opt out" proposal is not only contrary to the Commission's goals in expanding "trade through" coverage, it is bad public policy. It will invite gamesmanship that may irreparably damage our capital markets. Additionally, it will vitiate any benefit in trade quote compaction through decimalization.

We further believe that many or most of the contentions about benefits inherent in "certainty" and/or "speed" or "auto-ex" are simply sophistry. As we demonstrated previously there is neither certainty nor benefit demonstrable based purely upon speed.

One of the most dangerous aspects of this Reg. NMS proposal may be the suggestion that marketplaces be treated differently. By potentially favoring, or granting expanded latitude, to total auto-ex markets the regulation could, de facto, force all markets to go auto-ex. This would not expand choices for clients. It would, instead, result in a carbon copy similarity across markets.

Any objective observer must concede that much of the current debate regarding trade through and "opt out" has been driven by a segment of the financial services industry that wishes to bypass superior posted bids and offers in order to drive order flow to proprietary order execution facilities. While much of the debate purports to be motivated by public interest, it must be admitted that there is a certain disingenuous quality to many of the arguments that are put forth supporting the idea of allowing trade through. We at the AFB wish to cut through the clutter and state unequivocally that we feel that an enforceable trade through provision, across all markets, should be an overriding goal of Reg NMS. Any exceptions to this provision must be narrowly drawn and should address specific problems that may harm the public interest.

On behalf of the Alliance of Floor Brokers
Sincerely,

Brendan R. Dowd
Daniel W. Tandy
Ronald Zdrojeski