TOM DELAY
22D DISTRICT, TEXAS
MAJORITY LEADER
H-107 THE CAPITOL
WASHINGTON, DC 20515

437

One Hundred and Eighth
Congress of the United States
House of Representatives
Washington, DC 20515–4322

Chairman William H. Donaldson
U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20459

RECEIVED
JUL 13 2004
OFFICE OF THE SECRETARY

Re: Release No. 34-49408; File No. S7-10-04;

June 25, 2004

Dear Chairman Donaldson and Members of the Commission:

The economy of the United States is based on a competitive system of free markets and hard work. American investors rely on competition to provide them with the best services and the best prices in the world. But some outdated rules and regulations that govern our marketplaces have limited their ability to adapt to new technologies and the evolving needs of investors. If we are to insure that our equity markets remain the envy of the world, we must provide a framework that can adapt not only to the needs of today's investors, but to those in the decades to come. Therefore, I applaud your efforts to modernize the nation's financial market structure.

As the SEC continues its efforts, I encourage you to base its rulemaking on fostering free and open competition and an equal opportunity to succeed and to find the market that best responds to individual investor needs. The outdated rules that dictate to investors what is in their own best interest – such as the so-called "trade-through rule" – have no place in today or tomorrow's markets. Only each individual investor knows what is best for his or her portfolio. Every day investors select the agent who best serves their needs. Oftentimes they do the same in selecting where and how they execute their trades. It is not the Federal government's role to tell them how to make such decisions. The SEC's role is to provide a safe and reliable playing field in today's markets.

The SEC has such an opportunity as it considers changes to our nation's national market system. At the very least, you should incorporate the opt-out provision proposed in Regulation NMS, which promotes greater investor choice by allowing investors to determine how and where their trades are executed.

As you may know, the U.S. House of Representatives has reviewed this issue extensively. Capitol Markets Subcommittee Chairman Richard Baker of Louisiana has called the "trade-through" rule "an ossified relic of the time when intermarket competition was lacking, electronic trading was in its infancy, and spreads were much wider." Financial Services Chairman Michael Oxley of Ohio noted during a hearing last October that the international markets have adjusted to the modern marketplace and that he "had visited several of the bourses in Europe and not one of them, not one, had an auction exchange." They have been joined by other members of the committee who have also come to the conclusion that these outdated regulations must be repealed – or at least reformed.

Some argue that this rule is not impeding competition in the listed marketplace. But the facts show otherwise. There is no "trade-through rule" in the NASDAQ marketplace. The SEC's own 11Ac1-5 statistics show that the NASDAQ actually has lower effective spreads than the New York Stock Exchange (NYSE) market in S&P 500 stocks. This means that investors pay less in transaction costs on NASDAQ stocks than NYSE stocks. And when the SEC eased the "trade-through" limitations on the Exchange Traded Funds in 2002, the electronic marketplaces captured more than 50% of all of the trading volume in these three securities. The SEC's own statistics also show that a floor broker is as likely to get investors a worse price as a better price for some transactions.

Certainly, some investors will always find value in having their trades executed through an open floor or auction style system, and they should retain this option. If the existing system is truly the best system, then consumers will continue to use it. The great truth about our free market system is that individual choices, not government regulations, dictate the most efficient outcome.

This is why the final rule must included reforms that ease old barriers and do not create new ones. An opt-out would be a first step to providing America's investors with the ability to determine what factors are the most important to them when they trade. Complete repeal of the "trade-through" rule would be even better.

As the SEC reviews the comments on Regulation NMS, I urge you to look to those who represent individual investors, retail firms, and pension funds. All are calling for greater power over their own future. I believe they deserve it.

Sincerely,

Tom DeLay

Tom DeLay
Majority Leader
U.S. House of Representatives