

SEC Regulation NMS Hearings – April 21, 2004

Summary of Intended Testimony

Mr. Robert Steel on behalf of the Securities Industry Association

The Securities Industry Association, represented by Mr. Robert Steel (Managing Director, Goldman Sachs, and Co-Chair of the SIA Market Structure Committee), intends to testify as follows on the Regulation NMS proposals. For those proposals on which the SIA has reached consensus by April 21, SIA intends to discuss its positions. For those proposals on which SIA member firms are still deliberating, SIA will testify on the issues being considered and, if possible, the direction in which the SIA might be heading. (The SIA intends to file a comprehensive comment letter on Regulation NMS with the Commission on or before May 24, 2004.)

A. Regulation NMS - Overview

SIA intends to present its overall views on the need for market structure reform and on the Regulation NMS proposals. Among other things, SIA will offer its agreement with SEC Chairman Donaldson's statement at the February 24, 2004 SEC Open Meeting for Regulation NMS that, because the competitive nature of our markets cause them to continually evolve, "[i]t is critical to our mission that we examine changes and trends in our markets and assess whether our regulatory regime requires adjustment."

B. Regulation NMS Trade-Through Rule Proposal

SIA member firms are currently reviewing the trade-through rule proposal. This review is covering all viewpoints, from eliminating the trade-through rule altogether (in that investors may be better served by the protections offered by the general application of a flexible best execution rule and markets may be able to sort out the most appropriate level of customer protection and market efficiency), to endorsing the Commission's proposal with changes (such as those that would alleviate possibly difficult or burdensome implementation requirements of the proposed opt-out provisions), and to endorsing the Commission's proposal in its entirety. SIA also is reviewing the cost of complying with the proposed trade-through rule and certain compliance requirements. SIA intends to testify on any consensus positions developed in these areas by April 21, and to give an indication of the debate taking place and likely outcome for all other issues.

C. Regulation NMS Intermarket Access Proposals

SIA member firms are analyzing the Commission's proposals for (1) a uniform market access rule to ensure non-discriminatory access to the best prices displayed by market centers; (2) the establishment of a de minimis access fee standard for all market centers and broker-dealers that display attributable quotes through SROs; and (3) the prevention of locked and crossed markets. With regard to the uniform market access rule, SIA is exploring whether uniform standards or "hard" linkages better serve investors. Regarding access fees, preliminary views of some SIA member firms are that a de minimis access fee standard is acceptable. Finally, many SIA member firms appear to welcome the SEC's proposal to prevent locked and crossed markets, as they have been greatly concerned with the increasing prevalence of locked and crossed markets in the industry over the past few years. Once again, SIA hopes to develop consensus positions on some or all of these proposals by the time of the hearings, and will testify accordingly.

D. Regulation NMS Sub-Penny Quoting Proposal

Many SIA member firms already have expressed views in favor of the Commission's sub-penny quoting proposal. SIA will continue talking to its member firms to ensure that it develops a strong consensus position, and plans to testify on April 21 accordingly.

E. Regulation NMS Market Data Proposal

The Commission's proposal addresses how market data fees should be allocated, but not who owns the data or what the most appropriate price level for the fees should be – two market data issues of interest to SIA member firms. SIA member firms are studying these issues, and SIA will testify at the hearings on any positions reached by that time.

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If you have any questions or need further information, please contact Ann Vlcek, Associate General Counsel, SIA, at 202-216-2000.

March 26, 2004