



January 25, 2005

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

Re: File No. S7-10-04 Re-Proposed Rules NMS

Dear Mr. Katz:

I am writing on behalf of the Committee on Investment of Employee Benefit Assets (CIEBA), the voice of the Association for Financial Professionals (AFP) on employee benefit plan asset management and investment issues. CIEBA members represent 110 of the nation's largest corporate retirement funds, managing \$1.1 trillion dollars on behalf of fifteen million plan participants and beneficiaries. CIEBA members are responsible for the management of \$686 billion in defined benefit pension assets and \$436 billion in defined contribution assets.

As the fiduciaries for large corporate retirement plans, CIEBA members have a direct interest in the Security and Exchange Commission's proposals to update and modernize the National Market System (NMS), as we represent both institutional and individual investors.

In June, 2004, we expressed our concern about the NMS proposed regulation that would have allowed some investors to opt out of trading at the best price. We are pleased that the re-proposed rules have addressed this concern.

However, CIEBA has serious reservations about the second of two alternative proposals that would reform the trade-through rule governing how trades are routed. Under the so-called "depth-of-book" proposal, orders would be required to be executed simultaneously across any markets displaying best prices. While on the surface this proposal would appear to preserve the principal of price protection, we fear it is likely to lead to unintended and adverse consequences.



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A first concern is that depth-of-book order routing would significantly diminish competition between markets. Competition between markets has led to innovations that benefit both large and small investors. By mandating depth-of-book routing, trading markets can only compete on the basis of price. As a result, much of the competitive incentive that markets now have to develop new and better ways to meet customers' needs would be eliminated.

Second, a depth-of-book order routing process would make it difficult or impossible to execute block trades efficiently in the public markets. Large institutional investors will, at some cost, find alternatives in private and overseas markets. However, these actions will lead to greater fragmentation, less liquidity and higher transaction costs in the public markets to the detriment of both large and small investors. As fiduciaries for 401(k) and other defined contribution plans where participants direct their own investments, we are especially concerned that small investors will bear much of the burden of a fragmented market.

Third, this alternative trade-through rule may reduce the choice of both large and small investors to have orders worked through the continuous auction process offered by the New York Stock Exchange. While we credit your initiatives in updating the National Market System with providing an incentive for the Exchange to improve their automatic execution capabilities, we think that the depth-of-book routing system would virtually eliminate the auction process.

In sum, the proposed depth-of-book proposal would represent a fundamental change to the National Market System. CIEBA is concerned that the SEC would consider implementing a proposal of this magnitude with little public scrutiny or debate, particularly because we believe it could have far-reaching and not fully understood consequences. However, while the full consequences may not be known, we do foresee immediate and adverse effects on the core principles that have resulted in the most efficient markets in the world, namely, competition, liquidity, fairness of execution among all size investors, and investor choice.

In light of these concerns, CIEBA urges the SEC to withdraw its depth-of-book order routing proposal from the final NMS modernization regulations.

Sincerely,



Kimberly G. Walker
President, Qwest Asset Management
Chairman, CIEBA