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

RE: Regulation NMS, File No. S7-10-04

Dear Mr. Katz

This letter comments on proposed Regulation NMS, specifically, Rule 611, the Trade Through Rule, also known as the Order Protection Rule (OPR). First, we applaud the SEC in their goal to break down the barriers associated with the old Trade Through Rule. We believe that the existing Trade Through Rule is outdated and its protections are inconsistent with the growth of the automated trading market. Therefore, we agree with the SEC that order protection should be extended to automated order market systems and not manual trading systems.

We also understand and agree with the SEC's desire to protect limit orders from trade throughs. Limit orders are the basis for price discovery in the stock market. Investors who use limit orders lay their cards down on the table, so to speak, and they should be afforded some measure of protection from other investors trading through their limit prices.

We dutifully note that the SEC considered the interests of all investors and strove to balance the needs of those who submit marketable orders and those who submit limit orders.[1] Yet, we still believe that investors should have an opportunity to make choices, and therefore, an Opt Out provision is appropriate within Regulation NMS.

[1] See SEC Release 34-50870, Regulation NMS, Part II (A)(4)(b), p. 59.

As the representative of 1.4 million members, it is CalPERS' duty to achieve the best execution possible when trading the assets of the pension fund. Best execution depends upon best price discovery as well as speed of execution, probability of trade completion, convenience, and anonymity. Again, we dutifully note that the SEC provided certain exceptions to the OPR, notably sections (b)(5) through (b)(7) of Rule 611 to address some of these concerns, and we applaud this effort. Still, an opt out provision would enable CalPERS to add the most value for its members.

On a final note, while we have no specific comment regarding the "Top of Book" (Market BBO Alternative) versus the "Depth of Book" (Voluntary Depth Alternative) for the scope of protected quotations, we wonder how the Hybrid Market Proposal from the New York Stock Exchange (NYSE) would operate under the Depth of Book alternative. It is possible that the Depth of Book alternative could place the NYSE's hybrid initiative at a disadvantage and thereby potentially reduce competition among order market systems instead of stimulating it.

In summary, Regulation NMS is an important step forward to reduce the barriers of free trade across the order market systems in the United States. We support the SEC's efforts in this matter, and we hope that our comments will help to bring the Regulation to fruition.

Sincerely,

Mark Anson