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January 14, 2005

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

File No. S7-10-04—Regulation NMS

Dear Mr. Katz:

For many stock market participants, especially American's individual investors, Regulation NMS is a rather complex and challenging idea. We understand that the SEC's proposals are intended to modernize our national market system. We agree with the SEC's goal of improving fairness and transparency in stock transactions. We can appreciate the SEC's commitment to market evolution and competition.

In that context, the National Association of Investors Corporation (NAIC) – a body comprised of more than 230,000 individual investors and 21, 000 investment clubs with personal investments totaling approximately $116 billion – believes that the interests of investors must come first. Moreover, investors must be the primary beneficiaries of change in market structure, competition, governance and regulation. The SEC indeed recognizes and prioritizes the interests of investors and that Regulation NMS in, large part, reflects that spirit. For that, we commend the work of Chairman Donaldson, the Commissioners and the SEC staff, who all have done an outstanding job in helping to restore investor confidence and market integrity.

However, one aspect of the SEC's latest iteration of Regulation NMS does not serve the interests of investors, especially the small investors. Specifically, your alternative proposal on the trade through rule that mandates depth-of-book order routing would harm investors, issuers and our markets. The virtual Consolidated Limit Order Book, or CLOB, runs counter to what the SEC is trying to achieve with SEC NMS. The CLOB would effectively nationalize and homogenize markets. It would stifle innovation and market competition, heighten volatility and create great harm to price discovery and the ability of investors to realize the best possible price when buying and selling stock. It would put America's stock market at a disadvantage in the global arena.

U.S. equities markets are the strongest and most vibrant in the world. The CLOB proposal would create a splintered, electronic-only marketplace where markets and

investors would have to chase displayed orders from market to market. In that environment, large orders of stock would be difficult to manage. Instead, those orders would move to private markets or overseas – leaving individual investor orders in isolation. This would hurt small investors, including the membership of the NAIC and America's other 85 million individual investors who believe in benefits and promise of
our nation's stock market. It is, after all, a competitive advantage of our markets that institutional investors' orders are intermingled, so everyone gets equal and fair treatment and access to the full depth liquidity of the marketplace. The CLOB would change all that, and small investors would pay the price.

The NAIC supports the SEC's first option on the trade-through rule that protects the best bids and offers across all markets. This version, in addition to not allowing market participants to freely opt-out of trade through protection, will ensure that investors' best quotes will not be compromised when sending orders to the markets of their choice. This aspect of Regulation NMS will produce tighter spreads, improve liquidity and provide equal treatment of all investors who seek a fair and level playing field – while ensuring market competition based on best price.

On behalf of the NAIC membership, I applaud the Commission for its diligence in considering these important market structure issues and for proposing one alternative that will strengthen our national securities markets. However, it is clear to me the CLOB would damage our market system and harm American investors. The global financial marketplace is one in which the U.S. has, thus far, remained the leader. It is unclear to me why the SEC would want to fix what is not broken, and put the competitiveness of our capital markets at risk by again proposing to create a CLOB. The CLOB was rejected as recently as 2000 and I urge you to reject it again.

Let me add that the NAIC supports public policy decisions and market structure reform that prioritize investor interests. To that end, the NAIC supports a strong trade-through rule that provides price protection across all markets, opposes the opt-out provision and urges the SEC to improve inter-market linkages and other initiatives that strengthen market fairness, liquidity and transparency.

Sincerely,

Kenneth S. Janke
Chairman

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