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January 3, 2005

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OFFICE OF THE SECRETARY

The Honorable William H. Donaldson
Chairman
Securities and Exchange Commission
450 5th Street, NW
Washington, DC 20549

S7-10-04

Dear Chairman Donaldson:

I write to express my concern regarding the Securities and Exchange Commission's (SEC) proposed Regulation NMS, which though designed to update and strengthen our national securities markets, could well have the opposite effect.

As you are aware, the SEC recently proposed two alternatives for market structure. One would ensure that investors receive the best price for their transactions while making certain that investors benefit from the forces of competition. The other proposal would create the equivalent of a national Consolidated Limit Order Book (CLOB), a concept first envisioned in the late 1970's. I would note that this approach was reviewed by both Congress and the SEC in 2000, and was rejected for one overriding reason: it would effectively nationalize the U.S. equity markets, removing incentives for markets to compete with one another.

In my view, moving to a unitary electronic marketplace would effectively turn our internationally competitive, investor-driven markets into a quasi-government utility. Such an outcome would ultimately benefit neither buyers or sellers.

Today, the U.S. equity markets are the strongest in the world. In a splintered, electronic-only marketplace where exchanges would be compelled to chase displayed orders from market-to-market, large orders of stock would be extremely difficult to manage. The natural result would likely be a movement of these very significant transactions to private markets, or to markets outside the United States. It is unclear to me why the SEC is considering a proposal that would fix what is not broken, and put the competitiveness of the U.S. capital markets at risk. Adapting the rules of our capital markets to adapt to technological change is appropriate and necessary, but it should not be done in a way that would undermine the forces of competition which give our markets their strength over the long-term.

A more effective approach, in my view, would be the SEC's proposed alternative to the CLOB, that would uphold the best price in each market center. This approach would ensure that accepting the risk of being the best bid or offer, would not bring with it an unacceptable risk of being traded through. In short, this approach balances competition between quotes with competition between market centers, ultimately providing the best price and the fairest markets for market participants.

The SEC is taking on a very difficult and important task in modernizing our markets and I support this effort to ensure that our markets remain the most trusted and dynamic in the world. I would, however, caution strongly against any regulation that could undermine the competition between our markets, as I believe the national CLOB approach would. I appreciate your attention and involvement with this critical regulatory matter. I look forward to seeing a final rule that will protect our markets' competitive vitality and as a result, produce the best results for investors.

Sincerely,

GARY L. ACKERMAN