

**Testimony before the Senate Banking Committee
Hearing on Regulation NMS and Recent Market Developments
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Chairman Shelby, Senator Sarbanes and Members of the Banking Committee: my name is Scott Evans, and I am the Chief Investment Officer at TIAA-CREF. I appreciate your invitation to appear here today to express my company's opinion on how recent regulatory and structural changes in the U.S. market will impact all market participants, including individual investors.

TIAA-CREF has been focused on the financial welfare of individuals since Andrew Carnegie formed the Teachers Insurance and Annuity Association of America (TIAA) in 1918 as a fully funded retirement system to help colleges attract talented teachers. Our mission is "to aid and strengthen" the institutions we serve and to provide financial products that best meet their unique needs. TIAA created the College Retirement Equities Fund (CREF), a stock-based fund and the world's first variable annuity, in 1952. CREF is registered with the SEC as an investment company and TIAA is a life insurance company.

With over \$340 billion in assets under management, TIAA-CREF is a leading financial services organization, a major institutional investor, and one of the world's largest private retirement systems with more than 3.2 million participants at more than 15,000 institutions. We serve the direct economic interest of these members of the academic, medical, cultural and research fields without profit to our company. Our customer reach extends to every state in the nation. We have over 13,000 participants from 98 institutions in Alabama; nearly 40,000 participants at 395 institutions in Maryland.

In addition to our pension activities, TIAA-CREF also serves the general public by providing mutual funds, financial counseling, and 12 state sponsored 529 college savings programs. Each of our clients relies on us to invest their money wisely in the U.S. financial markets.

I commend the Committee for its forward-looking concern with the issues surrounding the rapid evolution of the U.S. equity markets.

Both the recently enacted SEC Regulation NMS and the proposed mergers involving our two major domestic stock exchanges represent seismic shifts that require careful scrutiny. As consumers become more aware of these issues, they will be most appreciative of your proactive oversight.

As background, we would like the committee to be aware that our CEO, Herb Allison, is on the NYSE Board, and he did participate in the vote on the merger. He did not attempt to influence the company's position on Regulation NMS.

Although we, at TIAA-CREF, don't pretend to be able to predict the future, we have a long history of large scale participation in the equity markets that may be helpful in understanding the implications of all this change for the American investor. We hold equity shares of more than 3,000 U.S. companies on behalf of our clients. This broad involvement requires us to use the full spectrum of trading venues in today's markets, including listed exchanges, NASDAQ, Electronic Communication Networks (ECN), and Alternative Trading Systems (ATS). We conduct about half of our trading activities using traditional physically intermediated methods (floor brokers or "upstairs dealers") and the other half through anonymous electronic transactions. The traditional methods are used primarily for large trades and the electronic techniques for smaller lot sizes. Since we regularly use both types of trading, we share the perspectives of both index funds who conduct most of their activity electronically and active managers who spend the bulk of their time doing traditional trades.

When we filed our comments with the SEC on Regulation NMS, our concern was that a trade through rule which requires brokers to always honor the best posted price may sometimes have the unintended effect of making it more difficult for investors to get the best deal available for all of their shares. This is because it is more important to get best execution on the whole order than the best price on every trade. The trade through rule in NMS essentially mandates that all large trades done at prices necessary to move large volumes of stock also include shares posted publicly on better terms. For our trades that are large enough to warrant private negotiations, we fear that such restrictions may impede our ability to conclude satisfactory agreements for large blocks of stock.

For example, should we desire to quickly sell a multi million share stock holding, it would be impractical for us to use electronic limit orders to accomplish our objective since the volume of such limit order activity is usually inadequate to handle such a large order. Therefore, in order to trade our entire volume for the best price, we would usually turn to a broker-dealer or alternative peer to peer trading system like Liquidnet to assemble a block trade. These trading venues allow us to obtain sufficient quantity of shares without distorting the market price for normal sized trades. Block trades are difficult transactions that require customized attention. The cost and complexity of linking the small trades on the public limit order books to these large private transactions is likely to be prohibitive. Furthermore, it is likely that the mandatory inclusion of trade volumes from the public limit order books might reduce the incentive for brokers to participate in these large trades. If institutional traders are not able to obtain the best price possible for the large trades that they seek, then the millions of individuals that they serve will be harmed as the returns on mutual funds and other institutionally managed savings vehicles are negatively impacted.

The U.S. equity market is increasingly dominated by large institutions who regularly conduct these types of large block trades. According to the Federal Reserve, over 50% of total equity assets in the U.S. market are now held by mutual funds and other institutional intermediaries on behalf of individual investors. In 1980, these same institutions controlled only 36% of equity assets. This is why the protection of institutional trading efficiencies is of growing importance to the American consumer. From our perspective, individuals investing directly in the markets would be better served if regulators redoubled their efforts to ensure that retail brokers fulfill their duties to provide best execution to individual traders than by establishing pricing rules on our stock exchanges that favor small volume retail trades. While we think it is too soon to conclude that regulation NMS will snuff out the encouraging trend toward increased innovation and competition in U.S. equity markets, the devil is in the details.

We also think it is premature to draw conclusions regarding the likely impact of recently announced mergers involving the NYSE and NASDAQ. The parties involved will build a system that best meet the needs of their customers and we would hope that the regulatory landscape will continue to support the innovation and competition that is needed to keep our equity market system world class. Thanks to a healthy environment for innovation in the past, U.S. investors now have Instinet and Archipelago to execute

small limit orders quickly and Posit, Liquidnet, and Pipeline to execute large trades anonymously and efficiently. They exist precisely because we have had a regulatory framework that encouraged entrepreneurial activities. We support any regulatory rule or business consolidation that will enhance this atmosphere of innovation and competition. Individual investors and savers, whether direct or indirect participants in the market, are better for this free market, and ultimately, so is the American consumer.

I would like to thank the Committee for inviting TIAA-CREF to share our views on this important topic. I look forward to answering any questions you may have.