Opening Statement of Congressman Vito J. Fossella
May 18, 2004
Committee on Financial Services
Subcommittee on Capital Markets, Insurance and GSEs
Hearing Entitled: "The SEC Proposal on Market Structure: How Will Investors Fare"

The Securities and Exchange Commission's (SEC) recent proposal to modernize the nation's financial markets remains one of the hottest topics on Wall Street. The proposal, known as Regulation NMS (National Market System), would address four critical issues facing the equities markets: trade-throughs, intermarket access, sub-penny pricing, and market data.

The area that has garnered the most attention has been trade-throughs, the foundation of the equities markets for more than two decades that guarantees small investors the best price available on their trades. That model has served the markets and investors well, but recently it has come under scrutiny as some brokers and dealers argue that technological advancements have made speed – and not price – a more important factor in executing trades.

The SEC has proposed modifications to the trade-through rule that would allow firms trading on electronic markets to opt-out. Under the plan, firms would be empowered to trade on the exchange of their choosing, with best price only one factor in their decision. In other words, small investors may get a fast trade but not necessarily the most cost-effective one.

When speed of execution supersedes best price, the little guy rarely benefits. Here's just one recent example highlighting the problem: A gentleman recently entered an order at 9:29:06 a.m. through an electronic system to sell 1,000 shares of a stock at $5.75. The stock was listed on the Nasdaq, where there is no trade-through rule. After the order was entered and during the time it was displayed, the investor noticed that 30,000 shares traded in lots but all at a higher price than 5.75. However, he did not participate in any of those sales. Because the trade-through rule does not apply to the Nasdaq market, the buyer or buyers of those shares traded through this investor's better offer.

If best price is eliminated from the National Market System, this type of problem will occur all day, across all markets, affecting investor confidence. It will create an uneven playing field for all investors and give an unfair advantage to those investors who are lucky enough to be in the right place at the right time.

Maintaining investor confidence in the capital markets is critical to the long-term prosperity of the U.S. and world economy. There is no question that best price must continue to serve as the underlying principle governing the markets. At this time, no plan has been presented that offers a viable alternative to the trade-through rule that would be more effective guaranteeing small investors the best price.

Fundamentally, we must ensure the markets remain stable, efficient, liquid and transparent. Any rule change must be weighed against its potential to impact these core principles.

We must always look for ways to create incentives for the American people to create, produce and invest. Since the founding of America, economic growth has been fueled by the ingenuity, imagination and vision of our people. To ensure long-term prosperity, we must inspire that entrepreneurial spirit, remove the barriers to capital formation and open the door for all to participate in the financial markets.

Small investors are the backbone of the U.S. economy. Guaranteeing them the best price on trades is one important way we can encourage more people to invest in their future and secure the American Dream.