E*TRADE FINANCIAL

June 30, 2004

Mr. Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

Re: Regulation NMS; Release No. 34-49325; File No. S7-10-04

Dear Mr. Katz:

E*TRADE Financial Corporation ("E*TRADE") welcomes the opportunity to comment on proposed Regulation NMS under the Securities Exchange Act of 1934 ("Exchange Act").[1] E*TRADE commends the Securities and Exchange Commission ("SEC" or "Commission") for addressing the complex market structure issues set forth in the proposal. We have long supported the fundamental goals of a National Market System, as set forth in Section 11A of the Exchange Act,[2] particularly the goal of assuring economically efficient execution of securities transactions. In this regard, E*TRADE has been an industry leader in leveraging the use of technology to lower the cost of securities transactions for all investors. We also have made available our technology and proprietary systems to vastly improve the transparency and accessibility of the markets for the average retail investor.

As discussed below, E*TRADE believes the Commission should require all market centers to provide automatic execution for orders received against their best bids and offers and to make such bids and offers available to all other market participants through a public intermarket linkage facility, making the proposed trade-through rule unnecessary. With several modifications, E*TRADE supports the Commission's proposed rules regarding access fees, locked and crossed markets, and subpenny quoting. The market data proposal unfairly discriminates against market centers that deal primarily with smaller retail orders, and, thus, should be revised.

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1 Securities Exchange Act Release No. 49325 (February 26, 2004); 69 *Federal Register* 11126 (March 9, 2004) ("Proposing Release").

2 15 U.S.C. 78k-1.

I. Introduction

The E*TRADE family of companies includes firms engaged in the retail, institutional trading (both agency and proprietary), clearing, and market making businesses.[3] As of March 2004, E*TRADE's broker-dealer affiliates executed approximately 283 million shares per day in U.S. listed and Nasdaq securities alone.

Although proposed Regulation NMS would have differing impacts on E*TRADE's various business lines, the positions we take today are on behalf of our 2.89 million active retail brokerage accounts.[4] As an advocate for the retail investor, our views reflect E*TRADE's commitment to best execution of customer orders and to overall fairness and efficiency in the market place. E*TRADE believes that retail investors are the lifeblood of the securities markets and that supporting a market structure designed to protect such investors ultimately will serve the long-term goals of all our business lines and the markets as a whole.

Briefly, Regulation NMS consists of four substantive proposals that would have a significant impact on the trading of equity securities in the U.S. markets. The Commission's proposed trade-through rule, subject to several exceptions, would require market centers to establish, maintain, and enforce policies and procedures reasonably designed to prevent intermarket trade-throughs. The proposed market access standards would require market centers to permit all market participants access to their limit order books on a non-discriminatory basis and would impose a *de minimis* "cap" on fees for accessing a market center's quotations. The third proposal would prohibit market participants from accepting, ranking, or displaying orders, quotes, or indications of interest in a pricing increment finer than a penny, except for securities with a share price of below $1.00. The fourth proposal would revise the rules and joint industry plans for disseminating market information to the public, by, among other things, modifying the formulas for allocating plan net income.

Before commenting on the specific proposals in Regulation NMS, we will discuss our general philosophy on market structure and the principles we believe should guide the Commission in developing rules in this area.

- First, it is axiomatic that the ultimate goal in considering proposed changes to market structure is to protect public investors. One of the overarching goals of the Exchange Act is "to insure the maintenance of fair and honest markets."[5]

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3 Our U.S. brokerage business comprises the activities of the following registered broker-dealers: E*TRADE Securities LLC, and its securities clearing firm, E*TRADE Clearing LLC; Dempsey & Company, LLC and GVR Company, LLC, specialists and market making firms; Engleman Securities, Inc.; and E*TRADE Professional Trading, LLC.

4 This figure is as of May 31, 2004.

5 15 U.S.C. 78b.

- Second, E*TRADE believes that market centers should be free to compete as they see fit, so long as their chosen market structure does not impede efficient intermarket trading.

- Third, we believe the Commission should acknowledge and embrace the communication and data processing technologies available today, which permit the seamless linkage of the markets as envisioned by Congress in Section 11A of the Exchange Act.[6]

We now will address the specific proposals for which the Commission seeks comment.

II. Proposed Trade-Through Rule

E*TRADE believes that the core problem the SEC is attempting to address through the proposed trade-through rule is the inability in today's market to trade efficiently with published quotations. The Commission notes in the Proposing Release that "in a fully efficient market with frictionless access and instantaneous executions, trading through a better-displayed bid or offer should not occur."[7] This is because the duty of best execution requires a broker-dealer to seek the most advantageous terms reasonably available under the circumstances for all customer orders. However, any weaknesses or inefficiencies in the system for reaching quotations and executing orders may compromise a broker-dealer's ability to satisfy this best execution duty.[8] We believe that these market inefficiencies can be more directly resolved by adopting an approach similar to the SEC's alternative proposal to require all market centers to provide an automated response to electronic orders at their published quotes and by ensuring fair and efficient access to those quotes.

In particular, E*TRADE believes that all market centers should be required to provide automatic execution for orders received against their best bids and offers by making available automated quotes ("Auto-Ex Alternative").[9] An "automated quote" should be defined as a quote that: is subject to automatic and immediate execution or cancellation

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6 15 U.S.C. 78k-1.

7 Proposing Release at 11129.

8 Proposing Release at 11154.

9 We also believe that manual markets (or manual "quotes," as contemplated by the Commission and discussed below) should be excluded from the national best bid and offer ("NBBO") when calculating execution quality statistics pursuant to Rule 11Ac1-5 under the Exchange Act (proposed to be designated as Rule 605). Market centers such as Dempsey/GVR often guarantee an automatic execution based on the NBBO, regardless of whether such best bid or offer is accessible. Eliminating manual quotes from the NBBO when calculating execution quality results would reflect the true level of price improvement that is provided to customer orders. However, *transactions* based on manual quotes should continue to be considered for Rule 11Ac1-5 purposes.

on a computer-to-computer basis with no human intervention; is subject to execution up to its total displayed size (depending on the size of the order) when an order is sent to the quote; and is updated automatically.[10] With regard to access, we believe that all market centers should be required by the SEC to make their top of book available to other market participants via a public intermarket linkage facility ("NBBO Linkage"). The NBBO Linkage would not be a central limit order book or CLOB. Rather, the NBBO Linkage would be a communication facility that provides the means for obtaining access to each market center's top of book. Without mandated linkage to automated quotes, we are concerned that the Commission's goals of enhancing and modernizing the National Market System and improving market efficiency will go unmet.

A. The Auto-Ex Alternative and NBBO Linkage Offer the Greatest Degree of Investor Protection and Render the Trade-Through Rule Unnecessary.

E*TRADE believes that the Auto-Ex Alternative, coupled with the NBBO Linkage, would provide the greatest degree of protection to retail investors. Automatic execution at the NBBO would ensure that all customer orders are executed at the best bid or offer displayed in any market, thus further encouraging investor confidence in our markets.

Moreover, if the Commission were to adopt the Auto-Ex Alternative and require the NBBO Linkage, the trade-through rule would be redundant and unnecessary. If a market participant knew that a quote was immediately available, there would be little incentive to bypass that quote for an inferior price. A broker-dealer's best execution obligation, in most cases, would require the broker to send its customer order to the market center quoting the best price.

In addition, under the Auto-Ex Alternative, there would be no need for the two proposed major exceptions to the trade through rule – the "opt-out" exception and the manual market exception (or the manual quote exception) – which together could effectively swallow the rule. If a market center was required to immediately fill an order at its quote, or route the order to another market center displaying a better price, there would be no need for investors to opt-out. The opt-out exception is only needed if market centers do not provide automatic execution to intermarket orders and such markets are not effectively linked. In that case, a customer may choose to opt-out of the trade-through rule's protections in order to ensure a fast execution. However, implementing the Auto-Ex Alternative and NBBO Linkage would address the Commission's concern that the ability to opt-out is inconsistent with the principle of price protection for limit orders. Investors would not be discouraged from entering limit orders and price discovery would not be diminished.[11] The manual market exception (or the manual quote exception) also

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[10] Instead of requiring automatic execution of orders within a specified minimum response time, we believe the markets would be better served by this more flexible standard that preserves some incentive for markets to compete to provide faster and faster response times.

[11] We agree with the Commission that "[w]hen trades occur at prices that are inferior to displayed limit orders or quotes, it could discourage their display because market participants may be less

would be unnecessary because all market centers would be required to provide the same basic level of automatic execution functionality, at least on an intermarket basis.[12]

B. If the SEC Neither Adopts the Auto-Ex Alternative Nor Mandates the NBBO Linkage and Determines that a Trade-Through Rule is Necessary, Certain Modifications are Critical.

Adopting the Auto-Ex Alternative and mandating the NBBO Linkage together would result in the most fair and efficient market structure and would best advance Congress' goals for the National Market System as set forth in Section 11A of the Exchange Act. Although we believe that implementing an intermarket trade-through rule would be far less effective than pursuing these joint initiatives, should the SEC decide to adopt such a rule, E*TRADE believes several modifications to the SEC's proposal are of paramount importance. First, however, it is critical that, even if the SEC does not mandate the NBBO Linkage described above, some form of effective private linkages must be in place before implementing the rule in order for market participants to comply with the rule. As the Commission itself acknowledges, "[t]his is especially true for Nasdaq stocks, where trading has expanded to multiple markets and where there is no existing 'hard-wired' linkage or minimum access standards, other than the telephonic access required by the Nasdaq UTP Plan and the minimum access standards of the [NASD's Alternative Display Facility ("ADF")]."[13] E*TRADE believes that without an effective linkage, obligating broker-dealers to access best prices across multiple unlinked markets is unreasonable and would create significant compliance difficulties.[14] Indeed, imposing an intermarket trade-through rule in an unlinked market would be setting up the industry for failure.

If the Commission determines to adopt an intermarket trade-through rule, E*TRADE believes the following modifications to the rule and its exceptions would be necessary in order to make the rule workable.

1. Automated Order Execution Exception

The Commission's trade-through rule, as proposed, provides an exception to permit an "automated order execution facility" to execute orders within its market without regard to

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willing to display limit orders or to quote aggressively if they believe it likely that such orders and quotes will be bypassed by executions in other markets at prices that would be advantageous to them." Proposing Release at 11131-32.

12 As noted above, E*TRADE believes the automatic execution requirement should be limited to the best bids and offers of quoting market centers and quoting market participants and not to their entire book.

13 Proposing Release at 11137.

14 As discussed in Section III below, private linkages likely would not address access to quotes of relatively inactive market centers.

a better price displayed on a "non-automated order execution facility," within price parameters ranging from 1 to 5 cents depending on the price of the stock.[15] In response to views expressed by industry participants at the hearing on Regulation NMS on April 21, 2004, the Commission issued a supplemental request for comment, specifically soliciting comment on whether the exception from the proposed trade-through rule should apply to *quotes* that are not immediately accessible through an Auto-Ex Facility (a manual or non-automated quote), rather than providing an overall exception for a manual *market*.[16] Consistent with our view that market centers should be free to compete as they see fit, as long as their market structure does not impede efficient intermarket trading, E*TRADE believes that the exception from the trade-through rule should be based on the distinction between manual and automated quotes, rather than manual and automated markets. We believe that narrowing the exception to manual quotes, which would allow a market center with an auto-ex facility to display a manual quote in certain circumstances, would provide more flexibility for market centers with floor-based structures to effectively integrate their trading floors with auto-ex facilities.

Regardless of whether the Commission adopts an exception that is based on the distinction between manual and automated quotes or manual and automated markets, however, E*TRADE strongly believes that, in order to implement an intermarket trade-through rule in today's market, it is imperative that the rule include an exception to permit trade-throughs *without regard to price parameters.* In other words, "fast" markets or quotes should be able to trade through "slow" markets or quotes by an unlimited amount. Such price parameters would be extremely difficult to administer and are completely arbitrary. Moreover, we see no basis for forcing a fast market or quote to trade with a slow market or quote based solely on the number of price levels the fast market or quote is away from the NBBO. The best execution obligation may very well require a broker-dealer to exercise judgment in choosing between price, on the one hand, and speed and certainty of execution, on the other hand. E*TRADE submits that, in today's market, a broker-dealer should be permitted to make this decision on a case-by-case basis. Therefore, E*TRADE believes that the manual quote or manual market exception, if adopted, should only be governed by the fiduciary requirements of best execution.

2. Opt-Out Exception

E*TRADE generally opposes the "opt-out" exception because it undermines the principle of price priority and could very well cause investors to lose confidence that their orders will be executed at the best price available. Moreover, should the SEC adopt a trade-through rule with an opt-out exception, E*TRADE believes the opt-out should only be

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15 *See* proposed Rule 611(b)(9).

16 *See* Securities Exchange Act Release No. 49749 (May 20, 2004), 69 *Federal Register* 30142 (May 26, 2004) ("Supplemental Release"). The Supplemental Release also extended the comment period on Regulation NMS until June 30, 2004.

made available to permit trading through a manual market (or manual quote). A broker-dealer or customer should not be permitted to provide this "trade-through consent" with regard to automated markets or automated quotes.

a. NBBO Disclosure Requirement

E*TRADE also believes the SEC should eliminate the requirement that a broker-dealer disclose to its customers that have opted-out the NBBO, as applicable, at the time of execution for each execution for which a customer opted out. This after-the-fact disclosure is not meaningful to a customer who has given informed consent to opt out. In addition, E*TRADE believes it would be extremely difficult to provide accurate reports of the relevant NBBO in fast moving markets trading in penny increments. If clock synchronization is imperfect, even a second difference may be significant, leading to incorrect and misleading information being provided to investors. Moreover, the NBBO requirement would require substantial and costly system modifications. Broker-dealer systems currently do not have the capability to identify the NBBO at the time of a transaction, or to place the NBBO on transaction confirmations. The SEC itself acknowledges that the one-time system changes related to the NBBO disclosure requirements would total approximately $193 million.[17] The NBBO disclosure requirement, therefore, would impose a significant burden on the industry, with no real benefit to investors. We believe these resources would be much better spent on implementing the Auto-Ex Alternative and the NBBO Linkage.

b. Order-by-Order Consent

The proposed rule also would require broker-dealers to obtain "informed consent," on an order-by-order basis, from each investor who chooses to opt-out of the trade-through rule's protections. The purpose of the opt-out, of course, is to ensure that investors for whom speed and certainty of execution may outweigh any incremental price advantage are free to make that trading choice, provided they understand its implications. However, E*TRADE believes that the order-by-order consent requirement is simply not workable. Obtaining consent on an order-by-order basis would slow down the order handling and execution process – defeating the very purpose for which the opt-out is designed. Indeed, we believe that, of our clients who would be interested in making use of the opt-out, most implement investment strategies that require the transmission of many orders in a short period of time or in many related securities simultaneously. Accordingly, E*TRADE believes that, should the SEC adopt a trade-through rule with an opt-out exception for manual markets or quotes, investors should be permitted to opt out of such trade-through rule on a global basis.

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[17] Proposing Release at 11146-47.

3. Intermarket Sweep Orders

E*TRADE supports proposed Rule 611(b)(7), which provides an exception from the trade-through rule for those instances in which an order execution facility sends an order to execute against a better-priced order displayed on another market at the same time or prior to executing an order in its own market at an inferior price. Such an exception will facilitate the use of smart routing technology, provided the exception is revised to address certain technical issues related to the use of "intermarket sweep orders." An intermarket sweep order could arise where an order execution facility "wants to be able to route an order(s) to execute against any better-priced bid(s) or offer(s) on other market center(s) at the same time as or prior to executing the remaining balance in its own market at an inferior price, or a market participant could wish to execute [some or all] of an order it holds by sending orders to interact with the best bids and offers displayed on other market centers."[18]

As the Commission notes in the Supplemental Release, "a market center that receives one part of an 'intermarket sweep order' would not know that other 'sweep' order(s) have been sent to other market centers."[19] As a result, the receiving market may "route the order it received to another market displaying a better price, even though the order router already has attempted to take out these better prices."[20] To remove this unintended market disruption, E*TRADE recommends the use of specially designated intermarket sweep orders, which would alert other markets to the sweep nature of the order. Such an order would carry a marker or "flag" that can be identified by routing technologies and that indicates that the order execution facility has sent order(s) to take out other relevant quotes.[21] Therefore, the receiving market center would be permitted to execute such a flagged order without regard to whether a better price was displayed on another market center.

We emphasize that such intermarket sweep orders differ from other types of orders routed to a market center. Intermarket sweep orders should be specially marked because they are utilized to obtain access to quotes in order to comply with any intermarket trade-through rule. Such orders are pivotal to the operation of an intermarket price protection structure because they are necessary to facilitate efficient access to the top-of-book of each order execution facility.

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[18] Supplemental Release at 30145, n. 32.

[19] Supplemental Release at 30145.

[20] *Id.*

[21] The SEC should publish for notice and comment the specific form of these quote flags or markers.

4. *De Minimis* Exception

As are many other firms in the industry, E*TRADE is concerned with false positive trade-throughs resulting from flickering quotes, clocks that are not synchronized, delays in quotation information and other practicalities of the markets. We, therefore, recommend a *de minimis* exception or tolerance level that would provide a minimal time increment window (*e.g.*, plus or minus three-seconds) to the intermarket trade-through rule. Of course, broker-dealers still would be subject to their general duty to seek to obtain best execution of their customers' orders.

5. Interaction With Existing Plans/Rules

The Commission's proposal would allow the SROs and joint industry plans to maintain trade-through rules that are more restrictive than the Commission's trade-through rule. E*TRADE believes that, in order to ensure consistency in this area, the SEC should either: (1) require the ITS participants to amend the ITS Plan and their respective trade-through rules to implement the proposed trade-through rule in its entirety; or (2) abrogate all existing intermarket trade-through rules. Permitting different trade-through rules, even if participants are permitted to withdraw from a plan that has more restrictive provisions, will disrupt the very uniformity the Commission is attempting to achieve. Differing trade-through rules could result in regulatory arbitrage and will be confusing to investors.

III. Market Access Proposal

E*TRADE agrees with the SEC that the absence of a uniform standard governing the terms of access to quotations may create practical impediments for brokers seeking to obtain the best available prices for their customer orders. Moreover, E*TRADE fully supports the SEC's *goal* of encouraging fair and efficient intermarket access through private initiatives. Under this model, competition would drive market participants to seek the most efficient and effective technology and routing methods available at any given time and the SEC's proposed standards would permit such technology to evolve on an ongoing basis. However, reliance on private linkages alone would not address access issues related to less active markets. For example, under the proposed access standards, access could remain a problem at relatively inactive alternative trading systems ("ATSs") or market makers with little trading volume whose quotations are displayed only in the ADF. This could enable larger, more active market centers to disenfranchise or effectively "freeze out" less active market centers, which could result in decreased quote competition to the detriment of the investing public.

If the SEC were to adopt the NBBO Linkage discussed above, this concern regarding access to smaller markets would be eliminated because all market centers would be required to make available their best bids and offers to other market participants via the public linkage. If the Commission does not mandate the NBBO Linkage, however, we believe that, in order to avoid disenfranchising relatively small markets (*e.g.*, ATSs with less than 5% of the volume in a particular security), such markets should be required by rule to participate in SRO execution systems with regard to their top of book.

With regard to access fees, E*TRADE agrees that a *de minimis* fee standard should promote a common quoting convention that will harmonize quotations and facilitate the ready comparison of quotes across the National Market System. Rule 610(b) also would eliminate the current competitive advantage that ECNs hold over market makers, thus promoting fair competition among broker-dealers.[22] E*TRADE generally supports the specific *de mimimis* amount proposed in Rule 610(b), but requests that the SEC clarify its application. The proposing release notes "a customer might incur more than one charge on a single transaction because an SRO would be permitted to impose a fee for access to its order interaction facility and a broker-dealer would be permitted to impose a fee for access to its quotes. The proposed rule would limit the accumulation of these charges in any single transaction to no more than $0.002 per share."[23] We believe it is important for the SEC to clarify how the $0.002 maximum fee would work, where multiple parties are involved with a single transaction. In particular, E*TRADE believes the SEC should make clear whether the fees charged by an order delivery mechanism (*e.g.*, the NYSE's DOT system) would be included in calculating the $0.002 fee cap.

Rule 610(c) would require every SRO to establish and enforce rules requiring its members to avoid locking or crossing the quotations of quoting market centers and quoting market participants. Although E*TRADE generally supports Rule 610(c), we believe there should be an exception from the locking provisions of the Rule for quotes of automated markets that lock or cross quotes of manual markets. In E*TRADE's experience, the quotes of manual markets often are not immediately updated, and, thus, are not a true indicator of price. For example, in today's fast moving markets, when a manual market is bidding $.20 and one or more automated markets are offering $.18, it is likely that the manual market's bid is stale. In circumstances such as these, automated markets should not be prohibited from locking or crossing a manual market's quote.

E*TRADE also supports the amendments to the fair access standards under Regulation ATS. Currently, Regulation ATS requires that ATSs with a least 20% of the trading volume in a security maintain standards ensuring that they will not unfairly discriminate or unreasonably deny access to their systems. E*TRADE supports the SEC's proposed lowering of the fair access threshold in Regulation ATS from 20% to 5% in order to ensure that the quotes of all significant market participants are accessible.

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[22] Rule 11Ac1-1(c)(2) under the Exchange Act prohibits non-ECN broker-dealers from charging an access fee in addition to their posted quotation. This provides ECNs with an unfair competitive advantage.

[23] Proposing Release at 11159.

IV. Sub-Penny Quoting

E*TRADE supports proposed Rule 612, which would prohibit market participants from accepting, ranking, or displaying orders, quotes, or indications of interest in a pricing increment of finer than a penny in any NMS stock, other than those with a share price below $1.00. We believe that sub-penny quoting generally decreases market depth and makes it more difficult for broker-dealers to meet certain of their regulatory obligations by increasing the incidence of flickering quotes. We agree with the SEC, however, that the rule should not prohibit reporting or "printing" a trade in a sub-penny increment. This will allow broker-dealers to continue to provide price improvement to customer orders in amounts that result in executions below a penny (*e.g.*, sub-penny prints resulting from a mid-point or VWAP trading algorithm), as long as the broker does not accept orders in increments finer than a penny.

V. Market Data Proposal

E*TRADE believes that the market data proposal as currently propounded is extremely unfair and inequitable in that it fails to recognize the informational and economic value of smaller transactions by the retail investor.[24] In particular, the so-called "Formula Amendment" excludes transactions with a dollar volume of less than $5,000 when calculating a Plan Participant's "Trade Rating," which, in turn, may determine the Participant's "Trading Share."[25] By providing that only transaction reports with a dollar volume of $5,000 or more are "qualified transaction reports," the Formula Amendment discriminates against market centers that deal primarily with retail customer orders. If transactions under $5,000 are excluded, revenues for market centers that primarily execute smaller retail orders would decrease, while larger market centers that may have more institutional volume would get higher revenues per transaction report. Thus, smaller market centers and those catering to retail investors will have less economic support, potentially reducing the level of liquidity these market centers are able to provide.

Moreover, the $5,000 floor is completely arbitrary and fails to take into account the substantial price discovery value of transaction reports for less actively-traded and lower-

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[24] The Commission is proposing an amendment to the CTA Plan, the CQ Plan, and the Nasdaq UTP Plan that would change the current formulas for allocating the Plans' net income to their SRO participants. The CTA Plan is operated by the Consolidated Tape Association and disseminates transaction information for exchange-listed securities. The CQ Plan disseminates consolidated quotation information for exchange-listed securities. The Nasdaq UTP Plan disseminates consolidated transaction and quotation information for Nasdaq-listed securities.

[25] The Formula Amendment provides that the SRO Participants are entitled to receive an annual payment for each calendar year that is equal to the sum of the SRO's "Trading Shares," "Quoting Shares," and "NBBO Improvement Shares" in each Network security for the year.

priced issues. For example, a $4,000 trade in a thinly-traded stock has much more price discovery value than a $40,000 trade in an actively-traded issue. Similarly, a retail customer order for 1,000 shares of a stock that trades at $4 per share contributes to price discovery just as much as an order for 100 shares of a stock that trades at $50 per share. Despite the clear price discovery value of the transaction reports in both of these examples, the Commission's proposed Formula Amendment would provide no credit for transactions under $5,000. Therefore, E*TRADE respectfully requests that the Commission eliminate the $5,000 volume threshold in its definition of "qualified transaction reports."

As a final matter, E*TRADE fully supports the portion of paragraph (d) of the Formula Amendment that would establish an automatic cut-off of Quote Credits when SRO quotes that are not fully accessible through automatic execution are left alone at the NBBO as a result of quote changes by other SROs. This should help assure that stale quotes are not highly rewarded and provide a further incentive for markets to provide automatic execution of their displayed quotations. As discussed in Section II above, however, we strongly encourage the SEC to adopt the Auto-Ex Alternative and NBBO Linkage. If the SEC were to mandate these joint initiatives, the automatic cut-off of Quote Credits contemplated by this portion of the Formula Amendment would be unnecessary.

VI. Conclusion

E*TRADE believes the time has come for the Commission to adopt the Auto-Ex Alternative and NBBO Linkage, which would require all market centers to provide automatic execution for orders received against their best bids and offers and to make such bids and offers available to other market participants via a public intermarket linkage facility. Automated execution and seamless linkage are fully attainable using today's technology and would make the proposed trade-through rule unnecessary. With the several modifications discussed herein, E*TRADE supports the Commission's proposed rules regarding access fees, locked and crossed markets, and subpenny quoting. The market data proposal unfairly discriminates against market centers that deal primarily with smaller retail orders. Therefore, the Commission should revise the market data proposal to recognize the value of smaller transactions.

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We appreciate this opportunity to express our views.

Sincerely,

Lou Klobuchar Jr.

Lou Klobuchar Jr.
President and Chief Brokerage Officer

cc: The Honorable William H. Donaldson, Chairman
The Honorable Cynthia A. Glassman, Commissioner
The Honorable Harvey J. Goldschmid, Commissioner
The Honorable Paul S. Atkins, Commissioner
The Honorable Roel C. Campos, Commissioner
Annette L. Nazareth, Director, Division of Market Regulation
Robert L.D. Colby, Deputy Director, Division of Market Regulation