ISE
INTERNATIONAL SECURITIES EXCHANGE.

June 30, 2004

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

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

Dear Mr. Katz:

The International Securities Exchange, Inc. ("ISE") appreciates the opportunity to comment on proposed Regulation NMS, a comprehensive effort to update the regulatory structure governing equity trading in the national market system ("NMS"). The Commission first published Regulation NMS for comment in February, 2004 (the "Initial Release") and then sought addition comment in May, 2004 (the "Follow-Up Release"). Although we currently limit our trading to options, the Commission's proposals are quite broad and eventually could be applied to our market. Also, as a registered national securities exchange operating under various NMS plans, we believe that the Commission may find our comments useful in finalizing Regulation NMS.

Summary of our Comments

- Trade-Throughs: We do not support the Commission's proposal to address trade-throughs through disciplinary means. Instead, we recommend that the Commission permit the market place itself to regulate trade-throughs: If a broker-dealer trades through a superior market without first sending an order to that market, the Commission should require the broker-dealer to fill any customer limit orders included in that market's disseminated quotation. We also have the following specific comments on the trade-through proposal:
  - We support a uniform trade-through rule for all equity markets;
  - We support the concept of a "de minimis" exception to the proposed rule; we support an "opt out" provision only with respect to a rule imposing disciplinary liability, but not for a rule focused on protecting customer limit orders; and
  - We support the Commission's decision not to mandate a central linkage, thus providing market participants with flexibility in accessing competing markets.

- Locked Markets: We do not believe there is anything inherently wrong with locked markets, and we thus do not support the proposal to restrict such markets. To the extent a market is locked, customers can buy and sell a security at the same price, a "zero spread." As long as locked quotes truly are accessible, and as long as a

market protects locked customer limit orders, we believe that that the Commission should not prohibit locked markets.

- Sub-Penny Pricing: We support banning sub-penny quotations. Rather than representing true price competition, the Initial Release shows that sub-penny pricing allows professionals to step ahead of limit orders by an insignificant amount of money. It hampers broker-dealers' best execution duties and interferes with pricing efficiency, all without any demonstrable benefit.
- Market Data Consolidation: We do not support either the proposed revenue sharing formula or the requirement for market data advisory committees. Instead, we urge the Commission to adopt the central recommendation of the "Seligman Committee": permitting competing consolidators of market data, thus allowing market forces – and not regulation – to shape this industry.

Trade-Throughs

The General Approach to Trade-Throughs: Regulation vs. Financial Liability

Proposed Rule 611 would require markets to adopt "policies and procedures reasonably designed to prevent the execution of a trade-through" in NMS Stocks, except in specified circumstances. A market's failure to adopt such a trade-through regulation would be a violation the Commission's rule; a broker-dealer's failure to comply with a market's trade-through rule would be a breach of such a rule, subjecting the broker-dealer to disciplinary action. We do not support the Commission's proposal to replace the current financial regulation of trade-throughs with disciplinary regulation.

The Commission first addressed trade-through regulation in approving the Intermarket Trading System ("ITS") Plan and the rules thereunder. Regulations such as New York Stock Exchange Rule 15A(b) urge members to "avoid" trade-throughs, but do not impose disciplinary liability for trading-though. Rather, there is strict liability on members who do trade through, requiring them to satisfy every superior disseminated quote traded-through unless an exemption is available. While the Commission notes in the Initial Release its preliminary view that these rules are outdated in certain respects, it also recognizes that these liability provisions are extremely effective in avoiding trade-throughs. Indeed, the Initial Release notes that some electronic communication networks do not trade listed stocks due to potential trade-through liability.

The Commission did not follow the ITS model when addressing trade-throughs in options. When the Commission first mandated that the options exchanges link their markets, these exchanges initially proposed a trade-through rule similar to the ITS rule. While not imposing liability for trading through all quotations, the Options Linkage Plan ("Linkage Plan") would have imposed liability for trading through customer orders included in an exchange's disseminated quote. However, the Commission did not believe that such liability was adequate to limit trade-throughs, and it required the options exchanges to provide in their rules that a "pattern or practice" of trading through other markets would be a rule violation.[1] Thus, a trade-through in options now subjects

[1] The Commission achieved this result somewhat indirectly by adopting a "trade-through disclosure rule." That rule required broker-dealers to make onerous disclosure to customers concerning trade-throughs, but exempted from the disclosure requirement trades on an exchange that had rules "reasonably designed" to limit trade-throughs. The Commission made clear that such rules must address trade-throughs both with respect to satisfying markets traded through, as well as through disciplinary actions. *See* Release 34-44482 (June 24, 2001). Because any exchange not exempt from the trade-through disclosure rule would not have been competitive in

an exchange member *both*: (1) to liability for satisfying customer orders it trades throughs (similar to ITS); and (2) to disciplinary action if it engages in a pattern or practice of trading through other markets.

Proposed Rule 611's sole focus on regulatory liability would complete the evolution of trade-through regulation from financial to disciplinary liability. The Commission even invites markets to withdraw from ITS upon adoption of Rule 611, thus eliminating the current protection that disseminated quotations have against trade-throughs.[2] We disagree with this approach, and we recommend that the Commission address trade-throughs by focusing on the two related ways in which trade-throughs can harm a customer: by a market providing a customer with an execution at a price inferior to the national best bid or offer ("NBBO"); and by allowing a market to trade through a customer's limit order included in another market's disseminated quotation.

With respect to customers receiving inferior executions, "best execution" regulation already addresses the area. As the Commission notes in the Initial Release, "all broker-dealers have an obligation to seek to obtain best execution for their customers' orders – specifically, to seek to obtain the most favorable terms available under the circumstances." We believe that this appropriately places the initial burden to avoid trade-throughs on the right party: the broker-dealer who controls an order and can direct the order to the appropriate market place. A broker-dealer that fails to provide best execution is already subject to discipline under current rules.

Even if best execution obligations alone do not sufficiently protect customers, competitive pressure fills any gap that may exist. Cognizant of broker-dealers' best execution obligations, exchanges cannot effectively compete for order flow without providing customers with assurance that the orders sent to the market will receive the best price available. For example, long before the options exchanges adopted trade-through rules, the ISE (and the other options exchanges) developed internal procedures to protect customer orders from being executed at prices inferior to the NBBO. While these rules generally applied only to customer orders, broker-dealers and other professionals are sufficiently sophisticated to protect their own interests when sending orders to a particular market for execution. The adoption of an options trade-through rule had little practical effect on how we operate our market.

Best execution obligations and competitive pressures alone do not address the second harm of trade-throughs: protecting customer limit orders included in a disseminated quote from being traded through. However, Rule 611 also would not protect away-market trading interest, and we see this as one of its major failings. As noted, under both the ITS Plan and the Linkage Plan, an exchange member that trades through a better quote on a linked market must protect that quote. In ITS, the member must respond to a trade-through complaint regarding all quotes of more than 100 shares it traded through; under the Linkage Plan, a member must fill Satisfaction Orders, representing customer orders included in a disseminated quotation that the member traded through.

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the market place, all options exchanges adopted rules making a pattern or practice of trade-throughs a rule violation. After the exchanges adopted those rules, the Commission repealed the trade-through disclosure rule. *See* Release No. 34-47013 (December 17, 2002).

[2] Specifically, the Commission states that "if [Rule 611] were adopted, any participant that no longer wanted to be subject to the more restrictive trade-throughs provisions of the ITS Plan could withdraw from the plan, as long as it could comply with [the new requirements]."

Consistent with best execution or other fiduciary concerns, there still may be a variety of valid reasons why a person decides to trade-through a superior quotation on another market. For example, limits on access to other markets, rapidly moving quotations, or depth of the market all could justify a particular trade at a price inferior to the NBBO. Indeed, in the Initial Release the Commission itself stated that it:

> recognizes that execution price and speed of execution are not the sole relevant factors in obtaining best execution of investor orders, and that other factors may be relevant, such as (1) the size of the order, (2) the trading characteristics of the security involved, (3) the availability of accurate information affecting choices as to the most favorable market center for execution and the availability of technological aids to process such information, and (4) the cost and difficulty associated with achieving an execution in a particular market center.

However, even when a broker-dealer executes an order at a price inferior to the NBBO consistent with its best execution obligations, we do not believe that the broker-dealer should escape liability to fill customer orders it traded through. In this situation, we endorse the Linkage Plan approach: impose liability on members to fill disseminated customer limit orders that the member trades through. The only exceptions should be those specific situations currently excepted in both the ITS and Linkage Plans, such as in "fast markets" or when there are system problems. Requiring broker-dealers to honor these prices not only protects such orders, but also acts as a powerful disincentive from trading through in the first place. There will need to be compelling reasons before anyone trades through a superior-priced quote and faces trade-through liability. Indeed, imposing immediate financial liability when a broker-dealer trades through another market has a much greater impact on a broker-dealer than the possibility of a disciplinary action at some future date.

We do not believe that the Commission has adequately explained why it proposes to replace a trade-through regulatory structure intended to protect customer limit orders with a structure focused on awkward, costly and time-consuming disciplinary procedures. We believe that the Commission can fine-tune the current ITS trade-through rule to remove the inefficiencies in that rule without abandoning the rule's proper focus on customer protection.

<u>Comments on the Specific Aspects of the Proposed Trade-Through Rule</u>

We believe that the Commission should refocus proposed Rule 611 on the protection of customer orders rather than on disciplinary liability. In that case, we have the following comments on tailoring the rule to limit trade-throughs and to address the harm that trade-throughs may cause.

Uniform Trade-Through Rule for All Markets

Currently, the ITS trade-through provisions cover all exchange-based trading of listed securities and some over-the-counter trading of such securities. There is no trade-through rule for Nasdaq securities, whether they trade over-the-counter ("OTC") or on an exchange. While there is an historical and logical basis for this distinction, such basis no longer exists. At the time the Commission approved the ITS Plan and the ITS trade-through rule, listed securities generally traded only on the listing exchange (generally the New York or American Stock Exchanges) and a variety of regional exchanges pursuant to agency-auction rules of trading. Nasdaq securities traded solely OTC in a dealer-based quotation-driven market. Without effective means to reach the various markets for Nasdaq securities, it made no sense to apply a trade-through rule to such trading.

Much has changed in the last 23 years. The Nasdaq market is no longer a dispersed, loosely-organized telephone-based market. It has grown in stature, with most OTC trading occurring in Nasdaq's electronic market or on other regulated markets, such as electronic communication networks. Nasdaq securities also trade on exchanges via unlisted trading privileges. Thus, an exchange can trade Nasdaq and listed securities side-by-side, with trade-through protection for one set of securities but not the other. Similarly, the New York Stock Exchange has repealed its Rule 390, which limited the OTC trading of its listed securities. This removed a barrier to the OTC trading of listed securities, and with such trading generally being subject to trade-through protection.

We fail to see any differences between the current listed and OTC markets that would justify an uneven application of the trade-through rule. Thus, we support the Commission's proposal to apply Rule 611 (as modified pursuant to our other comments) to both markets.

Exemptions from Trade-Through Liability

The Commission proposes a variety of exemptions from trade-through liability. We have specific comments on two of the proposed exemptions: the "opt out" and "de minimis" exemptions.[3]

Opt out: The opt out exemption would permit a customer or other person entering an order to agree, on an order-by-order basis, that it could receive an execution inferior to the NBBO. We would support this exemption only if, despite our objections, the trade-through rule remains focused solely on disciplining broker-dealers that trade-through other markets. If the Commission accepts our position that trade-through regulation should be focused on protecting customer limit orders, the Commission should not permit a broker-dealer to opt out of protecting customer limit orders.

We believe that an investor can make a rational decision to accept an inferior price due to the relative size of available quotations or the likelihood of receiving an execution in a market. However, that would not justify ignoring customer limit orders displayed in other markets. The trade-through rule should not permit a person "opting out" of receiving a superior execution for itself to opt out of providing other customers with a better price – as long as those superior-priced orders are accessible. For a market to receive protection of its displayed limit orders, the trade-through rule should require the market to provide an automatic execution for trades against such orders. Otherwise, the market holding the order would unreasonably be impeding executions in the NMS by delaying the possible execution of orders on other markets. In effect, a market could opt to protect its limit orders against trade-throughs by providing for automatic execution of such orders.[4]

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[3] In addition to these two exemptions, paragraph (b)(7) would exempt a person from the trade-through rule if that person, at or before the time of effecting the trade-through, sends orders to trade at all superior prices. We believe that providing this exemption is critical to the success of the rule, and we strongly support the adoption of this proposal.

[4] If, notwithstanding our comments, the Commission adopts a disciplinary-based trade-through rule and the opt-out exemption, we have one further comment on the specifics of the exemption. We do not believe it is necessary to require broker-dealers to inform a customer of the NBBO at the time of the trade-through. The broker-dealer can rely on the opt-out exemption only if the customer so requests, and only on an order-by-order basis. A customer would so request only when having enough information to make a rational decision. We see no purpose in providing selected information on a post-trade basis. Indeed providing the customer only with the NBBO could well be misleading as to the true state of the market.

De minimis: We support the concept of a de minimis exemption, believing that such an exemption is reasonable in a market place that trades in penny increments and in which there are both manual and automated executions. The Commission is proposing two ways to implement such an exemption, based either on "automated markets" or on "automated quotes." The "automated market" approach of the Initial Release would exempt from the trade trade-through rule de minimis transactions unless the entire market being traded-through was "automated." That is, the exemption would permit de minimis trade-throughs of manual markets in their entirety. In contrast, the "automated quote" approach of the follow-Up Release would permit de minimis trade-throughs only of those quotes not subject to automatic execution, even if the market being traded through provided automatic execution of other quotes.

We prefer the "automated quote" proposal because it is more narrowly tailored and gives markets flexibility to provide "hybrid" offerings of both manual and automated executions. We also encourage the Commission to give markets flexibility in implementing this exemption. For example, in response to the question in the Follow-Up Release, we do not believe the Commission should mandate that there be specific "codes" or indicators alerting market participants to automated quotes. Rather, we believe that market forces can achieve the same result: If the trade-through rule provides that only quotes designated by the entering market as automated are subject to the de minimis exemption, the markets themselves will develop the functionality to provide this information. We urge the Commission not to manage all the details of this exemption – or the NMS generally – but only to establish general principles, allowing the markets themselves flexibility on how to implement those principles.

Regardless of the specific approach the Commission adopts for the de minimis exemptions, we find the manner in which the exemption applies to quotations outside the NBBO to be inconsistent with the Commission's approach to trade-through protection. In this regard, the Initial Release defines a market to be automated only if it executes virtually all orders automatically, including orders when that market was not at the NBBO. While the Follow-Up Release does not contain proposed rule language defining an "automated quote," the discussion implies that a market must provide an automatic execution at the quotation price – even if the disseminated price is inferior to the NBBO – to be a an "automated quote."

While it is critical that a market provide automated executions when quoting at the NBBO, there is no need for a market to provide such executions if it is not at the NBBO. In fact, if a market automatically executes an order at a price inferior to the NBBO it will be in violation of the proposed trade-through rule by trading through a superior market. Rule 611 should permit a market not quoting at the NBBO to hold the order while it addresses the better quote away without losing its "automated" status.[5]

Absence of Formalized Linkages

We agree with the Commission's preliminary decision not to mandate a central linkage between market centers. ITS is a centralized "hub" through which all participating equity markets send commitments to trade and related messages. The

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[5] This is somewhat less of an issue if the Commission adopts the "automated quote" proposal. In that case, a market generally would be able to handle executions at prices inferior to the NBBO manually without losing its "automated market" status. However, a problem would still arise if a market trades at a price that is multiple ticks inferior to the NBBO. Such a print could trade-through a non-NBBO quote, and the non-NBBO market that is traded-through should receive protection for its quote even if it does not provide automatic execution of its non-NBBO quote.

options exchanges recently established their own centralized market linkage, also operating on the "hub" concept. When designing the options linkage, we advocated a decentralized approach with a set of governing rules for all the exchanges, but no single linkage infrastructure. Rather, the exchanges could use existing or developing technology to route orders and messages between themselves on a bilateral or multilateral basis. We anticipated that market forces would produce a variety of market access choices, at a reduced cost to the options exchanges.

Despite our support for a decentralized options market linkage, the majority of options exchanges favored the centralized approach now in operation. Although we have built a centralized linkage, we continue to believe that a decentralized, market-driven linkage is the right approach. Mandating a single communications vehicle limits innovation and can keep industry costs artificially high. There currently are a wide variety of vehicles for members and other market participants to access exchanges, electronic communication networks and other securities markets. Over the long term, we believe that the Commission's proposed decentralized, market-driven approach will benefit investors and the industry.

Locked Markets

The Commission proposes to regulate locked and crossed markets in a manner similar to trade-throughs: exchanges and the National Association of Securities Dealers, Inc. ("NASD") will need to adopt and enforce rules requiring members "reasonably to avoid locking or crossing quotations. . . ." Those rules must prohibit members from "engaging in a pattern or practice of locking or crossing quotations." Our concerns with this proposal mirror our concerns with the Commission's proposed trade-through rule.

A market is crossed when the best intermarket bid (offer) is priced higher (lower) than the best intermarket offer (bid) – that is, a person can buy (sell) a security at price less (more) than the sales (purchase) price. These market inversions do no require regulatory action since they are relatively rare and tend to self-correct due to arbitrage. Accordingly, we focus our comments on locked markets, where the best intermarket bid equals the best offer. Because we do not agree with the Commission's assumption that locked markets are harmful, we do not support the Commission's proposal to restrict such markets.

In a locked market, one person in the national market system is willing to buy a security at the same price that another person is willing to sell that security. While logic might suggest that the buyer and seller should trade at this price, in practice these markets do not always "clear" themselves since there are inherent costs in executing and clearing transactions. Although disseminated markets may remain locked, to the extent that those quotations are readily accessible, they actually benefit investors since the spread in the security is zero. Rather than allowing investors to reap these benefits, the Commission's proposal likely will result in market participants moving their quotations to inferior prices to unlock the market, providing investors with inferior prices.

We propose that the Commission's locked market rule focus on ensuring that investors can reap the benefits of these "zero" spreads. In particular, we recognize that locked quotations are of little value if it is not practical to trade at the disseminated price. Thus, we propose that the Commission include in the proposed locked market rule an exemption for any exchange or other market that automatically executes the full size of all locked quotations. The Commission specifically raises this as a possibility in the Follow-Up Release, when it requests comment on exemption from locked market regulation quotations accessible through automatic execution facilities. In such a case,

the quote clearly is fully accessible. Such quotes benefit the market, and banning such quotes serves no regulatory purpose. With the Commission's proposed market access requirements in Rule 610(a), all market participants will have a reasonable ability to execute against these locked quotes.

We also recognize that a market's quotation may lock a quotation in another market that represents a customer limit order. However, as long as the locking quotation is fully accessible through automatic execution, the market holding that order can protect the customer by sending an order on behalf of the customer to the locking market. This automated execution guarantee, again coupled with the Commission's proposed fair access rule, will ensure the protection of the customer limit order.

We believe that this approach to locked markets addresses all legitimate concerns regarding the potential harm of such markets. At the same time, it would permit the continued dissemination of locked markets when beneficial to investors. This will enhance both competition and pricing efficiency in the national market system.

Sub-Penny Pricing

We support the Commission's proposed ban on disseminating quotations in less than $.01 increments. The Initial Release makes clear that there are no real benefits to such quotations, and that some market participants appear to use such increments to "step ahead" of other quotations by an economically insignificant amount. The marginal pricing benefits of such actions do not appear to justify the costs of sub-penny increments such as hampering the ability of broker-dealers to satisfy best-execution obligations and potentially harming pricing efficiency.

Market Data Consolidation

We do not support the Commission's proposed regulation of the dissemination of market data. Rather, we recommend that the Commission loosen regulation of this area and permit natural economic and market forces to shape the market data landscape.

Currently, the exchanges and the NASD control the dissemination of market data information through NMS plans (the "Plans"). All Plans have the same basic structure: the markets provide their data to a central processor that acts as the consolidator and distributor of the data; the markets set the pricing of the data, subject to Commission review; and there generally is some form of exclusivity arrangement, limiting (or even prohibiting) a market's dissemination of certain market data outside of the Plans.

We believe that this current "consortium" approach to market data does not work well. The Plans provide little incentive for a market to enhance the data it disseminates. It results in monopoly pricing, placing the Commission in the uncomfortable role of having to determine whether the proposed monopoly price is "fair," without any governing legislative or regulatory guidelines. Also, the unwieldy governance structure of the Plans stifles innovation since any change to a Plan requires unanimous approval of all participants.[6] To address the inadequacies of the current market data distribution

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[6] While Plan governance is unwieldy, we do agree with the Commission's preliminary view that it is appropriate for the Plans to require unanimity in proposing an amendment to the Plan. The unanimity requirement is a natural outgrowth of the consortium process since it protects markets from potential anticompetitive actions of a majority. It also prevents smaller markets with relatively little market share from banding together to impose changes on larger markets. We view unanimity as necessary as long as there are NMS Plan consortiums. Rather than dispense with the unanimity requirement, we recommend dispensing with the entire consortium approach.

process, the Commission proposes: the adoption of a new formula to distribute market data revenue; and the requirement that each Plan have an advisory committee as part of its governance structure. We do not believe that these proposals are appropriate responses to the existing market data inefficiencies.

We do not pretend to understand the specifics of the proposed revenue distribution formula. However, our overall reaction is that any governmental proposal of this complexity to regulate market pricing is an inappropriate intrusion into the market. This clearly would be only a first attempt at a market data formula, thrusting the Commission into a never-ending process of reacting, debating, and refining the formula as market conditions change. We propose that the Commission trust market forces to help define the appropriate price of market data by abandoning the current consortium model. It is the pooling of market data that requires a formula to distribute the data; eliminating the pooling eliminates the need to divide the pool. Indeed, this is the central recommendation of the Commission's Market Data Advisory Committee (the "Seligman Committee"), which, unfortunately, the Commission has not accepted.

A majority of the Seligman Committee recommended that the Commission adopt the "competing consolidator" approach to market data. This would push down to the vendor level the requirement that there be consolidated market data, with each exchange and the NASD controlling and selling its own data, but requiring vendors to display such data on a consolidated basis. The Committee believed that this approach: would foster innovation; would eliminate the Plans' unanimous-vote requirement that acts as a bottleneck to change; would eliminate the need for competitors to act jointly in a manner that could raise antitrust concerns; and would eliminate the need to establish a revenue sharing formula.

The Commission rejected this approach for two reasons, stating that: there is a risk of disturbing the uniform way in which vendors disseminate data (which also could lead to increased costs); and that the Commission would need to review many separate fee filings, rather than a "consensus" fee set by a consortium. We do not believe that either of these perceived shortcomings outweighs the significant benefits that a majority of the members of the Seligman Committee found appealing.

With respect to uniformity, we believe that competing consolidators would not exacerbate current limitations in this area. Each market currently sends it market data to a central consolidator pursuant to its own processing schedule and the consolidator disseminates this data upon receipt. Since markets generally have up to 90 seconds to report trades, and because there is no uniform requirement for reporting quotations, there is no guarantee that current market data is properly sequenced. With competing consolidators, the Commission could adopt minimum – and uniform – standards on the receipt and sequencing of data that all vendors would follow. This might actually improve the accuracy of reported data.

As to the costs of competing consolidators, we believe that the competitive pressures of the free market would provide discipline to the process, encouraging each vendor to process and disseminate data in the most price-efficient way. The current monopoly approach imposes no pricing discipline at all since the participants in the Plan contract with a single processor, with there being little control over the processor's costs.

With respect to the Commission's review of market data pricing, we do not believe that the current process imposes significant discipline on pricing. In particular, there is little, if any, market discipline on pricing decisions. Moving to a market-based model will provide such discipline to the pricing structure, letting the market help price

the value of an exchange's data. This discipline should make the Commission's job in reviewing fee filings easier, not more complicated. While we agree that the Commission will need to review more fee filings than today, that is no different than the Commission's review of transaction or other fees, where exchanges and the NASD compete in the free market and the Commission must review each of their proposed fees for fairness. We see no reason to treat market data fees differently from other exchange and NASD fees.

It is for these reasons that we strongly urge the Commission to change its proposed direction regarding the regulation of market data fees. The free market approach is almost always superior to increased governmental regulation of financial matters. In addition, the competing consolidator model eliminates the need for each Plan to establish an "advisory committee" to contribute to the Plan's governance.

Even assuming the Commission does not adopt the competing consolidator model, we do not believe that advisory committees are a good idea. The public already has the ability to review and comment on proposed market data fees. Requiring powerless advisory committees will complicate the governance of the Plans without providing any significant benefits. If anything, it will raise more regulatory and antitrust issues as it will require competing markets to work together and forge uniform responses to any concerns that market data recipients have. As a participant in the Options Price Reporting Plan, we believe that this will lead to less efficient Plan operation and create more issues the Commission will need to address in reviewing Plan amendments. Again, we believe that fostering more market competition will better address the Commission's concerns and will better serve the investing public.

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We thank the Commission for the opportunity to comment on these important market structure initiatives. If you have any questions on this letter, please do not hesitate to contact us.

Sincerely,

Michael J. Simon
Senior Vice President and Secretary

cc: Chairman Donaldson
Commissioner Atkins
Commissioner Campos
Commissioner Glassman
Commissioner Goldschmid

Annette Nazareth
Robert Colby
Heather Seidel