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

File Number: File No. S7-10-04

Dear Mr. Katz:

In response to the Commission's request for additional comments, here are my additional comments on the proposed Regulation NMS.

First, I would like to reiterate my previous comments:

- The Commission has not fully justified the need for a rule as problematic in implementation as the proposed trade through rule. Listing markets should have the ability to compete with different types of rules. If one market wants such a rule, let it have it without forcing it on the other markets.
- The proposed trade through rule will create enormous implementation headaches while providing little real benefit. If the Commission must adopt a rule, it should be as an experimental rule applied in pilot project. The rule should be expanded to all stocks only if a thorough study of the pilot demonstrates a substantial improvement in market quality as a result. Changes in market structure should be made based on real evidence, not intuition.
- There is a need for an intermarket regulator to resolve the inevitable disputes between trading platforms. This entity, which should not be operated by any one of the trading platforms, should have the real-time authority to deal with crossed and locked markets, trade throughs, and to halt trading if needed.
- Eliminating sub-pennies is a good idea.
- As the SEC is re-enacting the 11ac1-5 reporting obligations, now would be a good time to rethink and retune the rules. The existing data are fine for academic studies, but useless for consumers.

Here are my comments on the additional requests for comment:

<u>The complexity of the revenue sharing formula will cause problems in implementation.</u>

With all due respect, the idea that a single vendor could deliver the definitive number without controversy is unrealistic. The amount of money at stake is simply too high for market participants not to double check and contest the calculations. Given the complexity of the formula, there will doubtless be numerous unforeseen instances in which there are differences of opinion as to how to interpret the formula. This will lead to long and messy disputes. For this reason, the Commission should strive for more simplicity in the formula.

<u>If adopted, the trade through rule should only apply to auto-ex quotes.</u>

In other words, there should be no limit on trading through a manual quote. To force the market infrastructure to come to a screeching halt because somebody says they might have a better price someday is ludicrous. Let investors make their own decisions about whether they want to wait for a better price or accept the price that is immediately displayed. If a quote is not available for immediate auto-execution, it is really just indicative and may not be really available when the customer goes to access it.

<u>A relief valve is necessary to deal with technical glitches.</u>

As proposed, the trade-through rule would appear to give any trading platform the ability to halt trading on other platforms. This will create a very fragile market architecture that is not fault tolerant. A trading platform that is having technical glitches can slow down or halt all trading in the entire market. If the Commission must have a trade-through rule, there needs to be a relief valve such that troublesome trading platforms can be automatically bypassed in real time. For example, the rule could state that if a market times out more than XX times, then the intermarket regulator would signal that the troublesome market's quotes could be traded through until the system glitches were ignored.

<u>A de minimis exception is an important relief valve.</u>

In order to reduce the traffic jam problem in which numerous traders try to hit one particular displayed quote simultaneously, and then swarm to the next best quote, there should be a "de minimis" exception for <u>*all*</u> stocks of between three and five cents. In this way, the trade through rule could prevent the most egregious trade throughs without causing major traffic jams on the market communication networks.

The allowable timeout interval should be the smallest that technology allows.

Because the proposal effectively halts trading while orders bounce from market to market, each market should be required to respond in the smallest time interval that technology allows. If a market does not reply within that length of time, then the sending market should be free to trade through. I suspect that one-fourth of a second (250 milliseconds) is more than enough time for one market to respond to another. The NYSE can already handle 4000 messages per second. (http://www.nyse.com/content/articles/1056810884848.html) Of course, policing this or any other timeout interval will be problematic. What happens if one market receives a response after 251 milliseconds by the clock of one market and 249 milliseconds on the other market's clock? Who resolves the dispute? Once again, there is a need for an intermarket regulator to resolve the dispute.