NASDAQ's Single Book Proposal:
No Justification For Regulatory Delay
May 11, 2006

Approving the Single Book quickly will benefit investors. If approved, Nasdaq's Single Book will benefit investors by offering a fast, transparent system that executes trades in price/time priority. It will promote competition by allowing Nasdaq to decrease overall trading costs for hundreds of firms that trade on Nasdaq for millions of investors' accounts. It also will ensure that Nasdaq is compliant with the new Access and Order Protection Rules of Regulation NMS. Delaying the Single Book will delay these benefits to investors, reward Bloomberg's routine dilatory tactics, and penalize Nasdaq after it responded faster than other markets to meet the original Regulation NMS implementation date.

Delaying Single Book will benefit only Bloomberg, which reported less than 1.5 percent of shares traded in Nasdaq securities during April of 2006. Bloomberg cannot credibly claim that its lack of preparedness for the Single Book would disrupt the overall marketplace or deprive investors of a meaningful choice. If Bloomberg fails to innovate, Bloomberg subscribers will do exactly what they did when the Commission permitted Nasdaq to require automatic execution in its Opening and Closing Crosses (Bloomberg cried wolf then also): subscribers will route their orders away from Bloomberg and towards more innovative, competitive venues.

Bloomberg has had ample time to respond to the Single Book proposal. Nasdaq filed the Single Book Proposal on February 7, 2006, and, in keeping with SEC rules, posted the proposal on its website just two days later. By March 6, 2006, Bloomberg had already written and filed a comment letter regarding the proposal. Bloomberg's own letter speculates, without proof, that re-programming would take a minimum of three months. By June 12, 2006, Nasdaq's planned date to implement the Single Book for Nasdaq securities, Bloomberg will have had over four months to prepare. Why, when the Single Book Proposal was available to Bloomberg and BATS simultaneously, was BATS able to re-program its system and Bloomberg not?

There is concrete evidence that ECNs can migrate to other venues, including three of the four commenters on the Single Book proposal. The BATS ECN migrated its order flow to the National Stock Exchange within weeks after Nasdaq filed the Single Book proposal, and the DirectEdge ECN and TrackECN are already participants in the NASD ADF. These three follow other ECNs that once posted orders within Nasdaq but have since elected to move their activities to regional exchanges or the ADF (Instinet, Island, Archipelago, Attain, and OnTrade (formerly NextTrade)).

There is no statutory support for a "regulatory delay" such as Bloomberg seeks. There is no provision of the Act and no SEC regulation that requires or entitles Bloomberg to post orders in Nasdaq. Even if Bloomberg supported with evidence its claims of potential disruption (it has not), there simply is no authority under the statute for the Commission to accommodate the business schedule of an individual market participant. Bloomberg should not distract the Commission from its mandate under Section 19(b) of the Act: to determine promptly whether a rule proposal is consistent with the Act and to approve or reject it accordingly.