MANAGED FUNDS ASSOCIATION

VIA ELECTRONIC MAIL: rule-comments@sec.gov

January 27, 2005

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

Re: Regulation NMS Reproposal, File No. S7-10-04, Release No. 34-50870 (Dec. 16, 2004)

Dear Mr. Katz:

Managed Funds Association ("MFA") appreciates the opportunity to provide the Securities and Exchange Commission ("SEC") with comments on proposed Regulation NMS under the Securities Exchange Act of 1934 (the "Exchange Act") as reproposed in Release 34-59870 (the "NMS Reproposal").

MFA's membership includes over 850 professionals in the global alternative investment industry, including hedge funds, fund of funds and managed futures funds, that manage a substantial portion of the over $1 trillion invested in these investment vehicles. Our members include representatives of 32 of the 50 largest hedge fund groups in the world.

As the leading trade association representing the hedge fund industry, we share the SEC's interest in facilitating a national market system that fosters order interaction and liquidity while realizing the benefits of competition among markets. MFA agrees with the SEC that sweeping changes in technology and the competitive landscape in recent years present new challenges for the national market system ("NMS") as well as opportunities. For this reason, MFA applauds the SEC's sustained efforts to modernize the NMS.

With respect to the NMS Reproposal, we wish to comment specifically on the proposal to establish intermarket price protection through use of a market-wide trade-through rule. As a general matter, MFA believes that the best way to encourage market depth and liquidity consistent with the operation of free markets is through requiring fair access to market centers and transparency rather than seeking to enforce price protection through a form of trade-through rule. Moreover, we believe that a trade-through rule imposes unwarranted burdens on the investing public that manages its money through use of institutional investors by privileging displayed price over other factors that are frequently important to best execution and limiting the flexibility of investors with large orders to adopt trading strategies that manage the risks associated with such orders. Regulation that requires market centers to develop efficient linkages and provide for fair access to their quotations on an automated basis, combined with the duty to provide investors best execution, would provide the necessary incentives for the display of limit orders critical to price discovery and liquidity.

Accordingly, MFA is not persuaded of the necessity of a trade-through rule. Nevertheless, we believe that a modernized trade-through rule that is appropriately tailored to minimize burdens on competition and large investors would represent a substantial improvement over the current ITS trade-through rule for listed securities. Not only would the proposed trade-through rule be more enforceable than the current ITS trade-through rule, it would encourage modernization and competition in the exchange-listed markets by seeking to provide price protection only to those automated quotes that are accessible and avoid undue delays.

Correspondingly, if the SEC decides to adopt its reproposed trade-through rule, we respectfully submit that it should at least initially limit applicability of the rule to the listed markets. Because these markets are already subject to the ITS trade-through rule, the application of the SEC's trade-through rule in this space would provide incremental improvements in price protection without imposing qualitatively new burdens on competition or the needs of large investors.

By contrast, we do not believe the SEC should extend any form of a trade-through rule to the over-the-counter markets at this time. In this regard MFA encourages the Commission to reconsider the analysis and data presented in the study prepared by the Commission's Office of Economic Analysis entitled "Analysis of Trade-throughs in Nasdaq and NYSE Issues" (December 15, 2004), as it does not provide an adequate basis for concluding that the Nasdaq marketplace needs or would benefit from a trade-through rule. For example, the OEA study fails to consider whether the trade throughs observed were "false positives" resulting not from actual trade throughs but from, e.g., the effect of ECN "reserve/replenishment" functions or the effect of locked and crossed markets.

In short, MFA believes the SEC should refrain from trying to fix a market that is not broken. Over the past 10 years, these markets have been characterized by sharp competition, increasing speed, and consistent reliability. Within the framework created by the SEC's adoption of the order handling rules, competition in over-the-counter markets has been the engine for tremendous innovation, improving the speed and quality of executions combined with dramatic reductions in execution fees. MFA believes that the costs entailed in imposing the reproposed trade-through rule on the over-the-counter markets and the risk of unintended and unanticipated consequences greatly outweigh the limited anticipated benefits.

In addition, MFA believes that the exemptions that the SEC has sought to incorporate as part of its efforts to accommodate the trading needs of investors with large orders, such as the market sweep and benchmark trade exemptions, are essential, and we fully support the SEC's efforts to include exemptions that will enhance investors' freedom of choice. We also believe that the SEC should provide guidance that the benchmark trade exemption will cover stop orders or provide a separate exemption for such orders. An exemption for stop orders would encourage efficient transfers of trading risk from investors with large orders to block facilitators willing to commit capital in conditions of insufficient liquidity.

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We appreciate this opportunity to comment on the Regulation NMS Reproposal, and we would be happy to discuss any questions the SEC or its staff may have with respect to this letter. Please feel free to reach me at 202.367.1140, or contact our counsel who assisted us with this letter, Steven D. Lofchie at 212.450.4075 or Jeffrey L. Robins at 212.450.4014.

Very truly yours,

/s/ John G. Gaine

John G. Gaine
President

cc: Chairman William H. Donaldson
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