January 26, 2005

VIA E-MAIL: rule-comments@sec.gov

U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549
Attention: Mr. Jonathan Katz, Secretary

Re: File No. S7-10-04, Re-Proposed Regulation NMS

Ladies and Gentlemen:

Lava Trading Inc. ("Lava") welcomes the opportunity to provide the Securities and Exchange Commission (the "Commission") with comments on the re-proposed Regulation NMS.[1] We applaud the Commission for the effort it has undertaken throughout this entire process. Lava provided comments[2] on the original proposal and was encouraged to note that several of our original recommendations such as intermarket sweeps and mid-point pricing were taken into consideration by the Commission.

As a technology firm, Lava is neutral in the current market structure debate and neither supports nor opposes the adoption of a uniform trade-through rule for the U.S. equity markets. However, Lava does have extensive experience in building high-performance trading systems that link to multiple market centers in both the listed and over-the-counter equity markets. In this regard, Lava would like to provide some insight into the potential technical complexities that may be a consequence of the re-proposal.

Under the best case scenario, if all quotes were automated and accessible electronically, the technology changes required to support the trade-through proposal would be non-trivial. However, with the additional proposals to address manual quotes, material delays and flickering quotes, the complexities and cost of implementation and enforcement have grown exponentially. In addition to these considerations, Lava believes that technology

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1 Regulation NMS, Securities Exchange Act Release No. 49,325 (Feb. 26, 2004), 69 Fed. Reg. 11,126 (Mar. 9, 2004) ("Proposing Release"); and Regulation NMS Extension of Comment Period and Supplemental Request for Comment, Securities Exchange Act Release No. 49,749 (May 20, 2004), 69 Fed. Reg. 30,142 (May 26, 2004) ("Supplemental Release"). Re-Proposed Regulation NMS, Securities Exchange Act Release No. 34-50870 (Dec. 16, 2004)

2 Letter from Richard A. Korhammer, Chairman and Chief Executive Officer, Lava Trading Inc., June 30, 2004 (File name: lavatrading063004.pdf)

providers may be in the best position to facilitate some routing decisions in order to comply with the proposed changes.

A summary of the key points, as proposed:

1) "an automated trading center is required to identify its quotations as manual (and therefore not protected) whenever it has reason to believe that it is not capable of providing immediate responses to orders."

2) "a "self-help" remedy that would allow trading centers to bypass the quotations of a trading center that fails to meet the immediate response requirement. Rule 611(b)(1) sets forth an exception that applies to quotations displayed by trading centers that are experiencing a failure, material delay, or malfunction of its systems or equipment."

3) "To address the problem of flickering quotations, re-proposed Rule 611(b)(8) sets forth an exception that allows trading centers a one-second "window" prior to a transaction for trading centers to evaluate the quotations at another trading center. Trading centers would be entitled to trade at any price equal to or better than the least aggressive best bid or best offer, as applicable, displayed by the other trading center during that one-second window."

These three key components, proposed for the purpose of facilitating the industry's transition, could inadvertently result in significant development cost and additional implementation complexities for firms seeking to be compliant with Regulation NMS. If one can imagine, each market center will have to define, reconcile and ultimately build or enhance their systems to automate these new components. In addition, all trading firms and technology suppliers will have to respond accordingly and make enhancements based on the changes implemented at each of the multiple market centers.

As alternatives, Lava suggests that implementation complexities and cost could be substantially mitigated if the Commission considers the following three recommendations.

1) Lava neither supports nor opposes a trade-through rule. However, if the commission deems that a trade-through rule is necessary, then Lava supports the concept of a de minimis trade-through.

Lava believes that a uniform de minimis trade-through rule would be simpler to implement and understand. This concept exists today and is understood by trading firms, execution venues and regulators. Leveraging that knowledge and the technology already implemented will facilitate the adoption of Regulation NMS without undue burden to the industry. This concept can be easily extended to cover a larger set of securities. A uniform de minimis trade through value would provide adequate protection of customer orders and motivate execution venues to improve their technology and pricing. In addition, Lava believes that any uniform de minimis trade-through exemption could address both the "flickering" quote and the material delay or system malfunction concerns.

2) Trade-Through Protection for the NBBO

Another alternative that will facilitate the adoption and ease implementation of Regulation NMS is a Trade-Through Rule that is focused on protecting quotations at the National Best Bid and Offer (NBBO) instead of market center Bobs. At the points of execution, trading occurs at the prevailing Best Bid or Best Offer aggregated from the market centers. By definition, this is the NBBO. By protecting the NBBO, the trade through would be indirectly protecting the market center Bobs that contribute to the NBBO. Again, the implementation complexities are mitigated based on leveraging a well defined and industry-accepted standard. If the commission believes that a trade-through rule is required, then Lava believes that either the de minimis trade-through rule or the NBBO trade-through rule would accomplish the commission's major goals with less difficulty.

3) Private Linkages Can Manage the Problem of Material Delays

Lastly, Lava and other technology providers will be providing the linkages that will support compliance with Regulation NMS. To ensure that this is workable, the ideal place to determine when to "bypass" stale quotes and market centers experiencing technical problems should be at the routing engine. Since the technology providers may be in the best position to determine the status of a market center based on previous orders sent, they should be able to make the decision not to route to the affected market center, on a market center or stock-by-stock basis.

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Lava appreciates the opportunity to comment to the Commission on re-proposed Regulation NMS and would be happy to discuss any of our thoughts with the Commission in further detail.

Very truly yours,

Richard A. Korhammer
Chairman & Chief Executive Officer