William H. Donaldson
Chairman
Securities and Exchange Commission
450 Fifth Street Washington, DC 20549

RE: Regulation NMS Proposal – (File No. S7-10-04)

Dear Chairman Donaldson:

Currently the Securities and Exchange Commission ("SEC") is considering changes to the so-called trade through rule. In summary the original rule was intended to insure investors would obtain the "best price" when that investor buys or sells stock. This has required that trade orders be sent to the marketplace posting or advertising the "best price". This allows markets that are slower to update their prices (such as the manual marketplace of the New York Stock Exchange) when new information enters the market to receive an inordinate amount of orders.

Many investors, particularly large institutional investors, are concerned with factors in addition to the "best price" such as: certainty of execution; speed of execution; and low market impact. The trade through rule does not bind stocks listed on the NASDAQ and investors have benefited from this flexibility through tighter spreads and lower transaction costs.

The currently proposed SEC modifications to the trade through rule include an opt-out exception. As currently drafted the opt-out exception requires brokers to receive "informed consent" from an investor before allowing that investor to opt-out. The opt-out exception must be revised in order to ensure that opting out is a real choice for investors. The value of the opt-out exception is only as good as its ease of use and implementation – the more difficult it is to opt-out of the rule, the fewer times the exception will be used and the less valuable it is to the investors. Therefore, the final rule must:

- Clarify that sophisticated investors can opt-out simply by including an opt-out instruction when submitting their order or by using an order type specifically created for this purpose.
- Confirm that a broker is considered to have obtained informed consent from a sophisticated investor if that broker receives an opt-out instruction when the order is submitted or an opt-out order type is used. Without such confirmation, brokers will need to create time-consuming processes to ensure informed consent, introducing delays that would compromise the value of the exception.
- Allow sophisticated investors with the ability to enter into individual agreements with their brokers to opt-out on a global basis, that is, to instruct their broker that all of their trades are to be opted out.

Additionally, the SEC must allow markets to publicly display opted out orders that lock or cross the displayed quotes of other markets. Allowing the display of these orders will increase market transparency, enable competition among markets, narrow spreads, and enhance order interaction among markets. Prohibiting their display would reduce market transparency, impede competition among markets, widen spreads, and decrease order interaction among markets.

The current Regulation NMS proposal also requires brokers to provide investors that opt out with the best-advertised price at the time their order is executed. Providing such information after the fact is unlikely to have any value to most, if not all, sophisticated investors who make the decision to employ the opt-out exception. Consequently, sophisticated investors should have the ability to choose not to receive this information.

Investors will not have true choice if the final regulations are too complicated or burdensome. Thank you for considering my comments on the proposed Regulation NMS.

Sincerely yours,

Ronald F. Gibbs