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January 22, 2005

Jonathan G. Katz, Secretary,
Securities and Exchange Commission,
450 Fifth Street, NW
Washington, DC 20549–0609.

Re: File Number S7–10–04.

Dear Mr. Katz:

Thank you for the opportunity to speak out on the subject matter in File # S7-10-04. The reroposed rules may offer the best opportunity since the Exchange Act of 1934 to correct serious issues which subsequent regulations could not anticipate but have seriously eroded confidence in our capital markets and affect all investors. Attached please find Appendix A, FileS7-10-04: Comments, in response to re-proposed rules under Regulation NMS and two amendments to the joint industry plans for disseminating market information.

As an individual investor, I request that the Commission adopt rules which redress the excesses favoring market participants generally called insiders. For decades insiders have had rules fashioned which define a "market" and its operation which stand in stark contrast to the investment industry's widely promulgated views to the retail investing public rendering at best an inaccurate description of what constitutes a "market" and how it operates. Further, based on historical experience, the concept of self regulation appears to favor exchange and association members, broker dealers, market makers, specialists and other market professionals over retail and other investors. Please see discussion and comments related to Pp. 81-82 trade-through Commission position and other sections.

Comments submitted herein are based on personal documented experience and are presented with the intent of providing the Commission with a non-professional investor's viewpoint acting on generally available information about "markets" and their operation. The investing public has been presented with excessively "simplified" information about what constitutes a "market" and how it operates. In truth, the generally available information does not publicize the labyrinthine system of price determination arising from an array of data dissemination vendors or the multi-level "market" access conditions or the ramifications of a minimally described compensation system based on order flow and the innumerable operational conditions related to these and other structural components of "markets".

Individual investors should not be required to have an exhaustive background in how "markets" are structured and operate, how prices are determined and how data is promulgated and made available for either trade execution or for information only or what parties are allowed to execute against promulgated quotations before "investing" any more than they should be required to know what avionics components are and what conditions result in their failure and subsequent catastrophic loss before taking a commercial airline flight. "Markets" appear to have been gamed by insiders. Consequently major changes are required to alter insider behavior and compensation, market concept and operation and mandatory disclosure statements by the securities industry to retail (and to other) investors before those who have suffered huge losses from buying overpriced stocks, would consider having confidence in them. If the conditions referred to here are not subjected to serious reform, then US equities represent high risk with, at best, unknown and uncertain returns.

Yours very truly,

Paul W. Lerro
2317 N. Teddy Street
Visalia CA 93291-9074

Appendix A

File S7-10-04: Comments

The following comments **(in boldfaced type and sometimes larger font)** detail responses to various parts of :

SECURITIES AND EXCHANGE COMMISSION 17 CFR PARTS 200, 201, 230, 240, 242, 249, and 270 [Release No. 34-50870; File No. S7-10-04] RIN 3235-AJ18 REGULATION NMS AGENCY: by Securities and Exchange Commission (in regular type, quotation marks and smaller font)

and the Commission's stated objective to take action on the proposed rules and amendments to joint industry plans.

Attempts have been made to categorize responses as they were presented in the original document and by subject.

1. "...First, the "Trade-Through Rule" would require trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution of trades at prices inferior to protected quotations displayed by other trading centers, subject to an applicable exception. To be protected, a quotation must be immediately and automatically accessible. ..."

a. **Initially the trade through rule appears to be a significant improvement over the current system which has been and continues to be gamed by trading entities for their own benefit and not in the public interest, for the protection of investors, or the maintenance of fair and orderly markets.**
b. **In complying with exceptions, trading centers should be required to protect against microsecond computer driven automated bids and offers generated by nanosecond computing systems of those well capitalized and very high technology traders gaming the automated system to effect prices for their benefit**
c. **If at any time only one or a few trading centers are determined to be automated, i.e., functioning in an automated mode, then submission and execution of bids and offers by one or a few trading entities should be scrutinized to determine if market power is being exerted.**
d. **If a manually placed bid or offer made within a given interval, e.g., less than 2 seconds, resulted in a trade through, then the automated quote trade through may result from true market forces. However when a manual quote existed for a considerable time, e.g., more than three seconds, before an automated quote is generated resulting in a trade-through under the reproposed rule, then the trade-through may result from an attempt to manipulate price, particularly in low volume thinly-traded stocks and high-beta stocks.**

2. Second, the "Access Rule" would require fair and non-discriminatory access to quotations, establish a limit on access fees to harmonize the pricing of quotations across different trading centers, and require each national securities exchange and national securities association to adopt and enforce rules that prohibit their members from engaging in a pattern or practice of displaying quotations that lock or cross automated quotations.

a. **Meritorious effort to have wide promulgation of price and volume information made available for the purpose of maintaining fair and orderly markets.**
b. **If NYSE listed stocks DOB were widely promulgated, liquidity would be enhanced and prices would more likely be subject to market forces than structural/technical conditions of trading and may contribute to lowering the cost of capital for competitive enterprise operation.**

3. Third, the "Sub-Penny Rule" would prohibit market participants from accepting, ranking, or displaying orders, quotations, or indications of interest in a pricing increment smaller than a penny, except for orders, quotations, or indications of interest that are priced at less than $1.00 per share.

a. **To level the trading playing field, sub penny quotes/executions, unless readily available to all market participants, should be banned.**

4. "Finally, the Commission is reproposing amendments to the "Market Data Rules" that would update the requirements for consolidating, distributing, and displaying market information, as well as amendments to the joint industry plans for disseminating market information that would modify the formulas for allocating plan revenues ("Allocation Amendment") and broaden participation in plan governance ("Governance Amendment"). "

Appropriate structure and methodology to effect protection of ALL investors and maintain fair and orderly markets is required. Trade data should all be presented at the time of execution and not the time of reporting regardless of source of data, i.e., if a data provider reports any execution it must be the time of execution and not the time of the report. Also NYSE specialists should be required to report executions and not merely results of market orders. Regarding specialists grouping all market orders for reporting purposes at the same price up to offer size and not as to the submitted orders, e.g., actual Buy to Cover and/or Buy orders submitted at market being different from the number of executions, reporting requirements should be identifying the executions at separate price and not filled orders. Specialists by reporting filled orders and not executions fail to represent the actual orders as placed at the time of placement but the specialist's reporting method after the order is filled. Specialists should report executions. When a partial fill of a market order occurs, i.e., a specific execution and not a seperate order, the specialist did not record the execution; however the execution to fill the market order was reported. Three executions occurred but only two trades were reported. For a specific case, see two reported trades but three executions at market on 1/13/05 EFD @ 1:03:24; a reported trade for 200 shares @ 21.46 representing two different executions of 100 shares each and 1:03:26 trade @ 21.49 for 100 shares which was a partial execution filling a market order for 200 shares executed at 21.46 for 100 shares and 21.49 for 100 shares yielding a total of three executions and two reported trades. The number of executions was undercounted and in this case misrepresented the purpose of one of the two market orders, which was to secure the 21.46 price for 200 shares and not provide support for a 21.49 offer price.

The ITS Plan, "Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(c)(3)(B) of the Securities Exchange Act of 1934" is obsolete given the technological capabilities of well capitalized trading entities and their technical capabilities and MUST be replaced by a plan reflecting current and future conditions in trading and market operations with guarantees of performance, including immediate and severe penalties for breaking rules related to trading or operations conducted against the public interest, or the protection of ALL investors, or the maintenance of fair and orderly markets. Without immediate penalties and censure, the benefits from the offense will outweigh the costs and such offenses will continue and fair and orderly markets will not exist.

"a trading center would be required to regularly surveil to ascertain the effectiveness of its policies and procedures and to take prompt action to remedy deficiencies"; the time of response to trading irregularities is crucial to the effective operation of fair and orderly markets. Also from Pa. 16: "The routine execution of trades at prices inferior to those offered by displayed and accessible limit orders is inconsistent with basic notions of fairness and orderliness, particularly for investors, both large and small, who post limit orders and see those orders routinely traded through. … the Commission preliminarily believes that a uniform rule establishing price protection on an order-by-order basis is needed to protect the interests of investors, promote the display of limit orders, and thereby improve the efficiency of the NMS as a whole."

In the period 10/2002-9/03 NASDAQ's Marketwatch was repeatedly contacted regarding trades which were executed and violated NASDAQ's own rules, but they repeatedly allowed the trades and took no action against those traders even when the trades established a new high and were outside the inside market.. Additionally large numbers of trades were executed outside the inside market and allowed those traders an unfair advantage over others who considered the value of an ongoing enterprise representing, nominally, the equity being traded by exceeding technical levels in intraday trading and inducing (manipulating) a further increase in price.

P.309 **§ 240.10b-10 Confirmation of transactions.**

(B) In the case of any other transaction in an NMS stock as defined by § 242.600 of this chapter, or an equity security that is traded on a national securities exchange and that is subject to last sale reporting, the reported trade price, the price to the customer in the transaction, and the difference, if any, between the reported trade price and the price to the customer.

The requirement to identify the difference between the reported price and the price received by the customer is a very good reporting rule and monitor for trade-through rule compliance and if the exchange or association member profited by selling to or buying from a customer while complying with the trade-through rule. No such profit should be allowed; instead the member should be allowed a fee based on the number of shares transacted at rates determined elsewhere in Regulation NMS.

P 337 § 242.601 Dissemination of transaction reports and last sale data with respect to transactions in NMS stocks.

a 2(v) The applicable standards and methods which will be utilized to ensure promptness of reporting, and accuracy and completeness of transaction reports; "

This part of 242.601 is regularly not observed in (a) establishing end of day closing price in low volume stocks such as EFD on NYSE (see closing prices, 1/20/05 and 1/21/05 as two most recent examples in EFD; as per reported time and sales on Tradestation Securities platform, closing price was set to executions/reported trades after 4:00:00 by 2 – 3 minutes at a price above the reported trades at or near to 4:00:00 PM) and (b) intraday delays in reporting until much later and often after the close of the regular session. Reasons given by one broker for late determination of closing price include that a "balance" needs to be set by a specialist after the close of trading. To allow a specialist the power to set closing prices is antithetical to the very existence of fair and open markets; closing prices should not be determined by a specialist with conflicts of interest after the regular session has ended but by the competing bids and offers present in the marketplace for EFD and the ending execution at 4:00:00 or as near to that time but not later than that time (and, by extension, all other stocks). Reports after the close of the regular day session of executions made during the regular session seriously distort trading information presented to the public during the regular session and should be banned. Executions should be reported when made e.g., within 3 seconds, and reported as the time of execution and not the data provider's run time. To allow late and after the close reporting of intraday trades is to allow distortion of the actual demand:supply picture in an equity at the trade execution time.

P. 349 § 242.603 Distribution, consolidation, and display of information with respect to quotations for and transactions in NMS stocks.

Writer strongly suggests requiring distribution of DOB by all trading centers to data vendors as a requirement under Regulation NMS to promote liquidity and more reliable market information; such requirement would result in innovation in reporting technologies and lead to lower reporting costs for all trading centers and data vendors.

Pp 352-357: § 242.605 Disclosure of order execution information.
And § 242.606 Disclosure of order routing information.
Writer supports these paragraphs.

P 357: § 242.607 Customer account statements.

(a) No broker or dealer acting as agent for a customer may effect any transaction in, induce or attempt to induce the purchase or sale of, or direct orders for purchase or sale of, any NMS stock or a security authorized for quotation on an automated inter-dealer quotation system that has the characteristics set forth in section 17B of the Act (15 U.S.C. 78q-2), unless such broker or dealer informs such customer, in writing, upon opening a new account and on an annual basis thereafter, of the following:

(1) The broker's or dealer's policies regarding receipt of payment for order flow from any broker or dealer, national securities exchange, national securities association, or exchange member to which it routes customers' orders for execution, including a statement as to whether any payment for order flow is received for routing customer orders and a detailed description of the nature of the compensation received; and

(2) The broker's or dealer's policies for determining where to route customer orders that are the subject of payment for order flow absent specific instructions from customers, including a description of the extent to which orders can be executed at prices superior to the national best bid and national best offer.

Notice should be at least quarterly.

P 359: § 242.608 "Filing and amendment of national market system plans.

a. 5 (i) The terms and conditions under which brokers, dealers, and/or self-regulatory organizations will be granted or denied access (including specific procedures and standards governing the granting or denial of access);

a.5.(ii) The method by which any fees or charges collected on behalf of all of the sponsors and/or participants in connection with access to, or use of, any facility contemplated by the plan or amendment will be determined and imposed (including any provision for distribution of any net proceeds from such fees or charges to the sponsors and/or participants) and the amount of such fees or charges;

a.5.(iii) The method by which, and the frequency with which, the performance of any person acting as plan processor with respect to the implementation and/or operation of the plan will be evaluated; and

a.5.(iv) The method by which disputes arising in connection with the operation of the plan will be resolved. "

Success in achieving benefits for investors from the reproposed regulations relies heavily on access to protected quotes and ability to post protected quotes. Consequently the above four subsections of 242.608 are crucial and form the substantial strength or weakness in any national market system plan.

P. 365: "§ 242.610 Access to quotations.

(a) Quotations of SRO trading facility. A national securities exchange or national securities association shall not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access through a member of the national securities exchange or national securities association to the quotations in an NMS stock displayed through its SRO trading facility."

"A member of the national securities exchange or national securities association shall not impose unfairly discriminatory terms that prevent or inhibit any person from obtaining efficient access to displaying or executing quotes on any SRO trading facility. "

"Rule 611(a)(1) would require a trading center (which includes national securities exchanges, exchange specialists, ATSs, OTC market makers, and block positioners)[33] to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs of protected quotations and, if relying on an exception, that are reasonably designed to assure compliance with the terms of the exception. "

Pp 367-368: Since exceptions are most problematic, they must be carefully considered as they allow circumvention of Regulation NMS. From § 242.611 Order protection rule: please note that with regard to (3), (4) and (8):

"(3) The transaction that constituted the trade-through was a single-priced opening, reopening, or closing transaction by the trading center. "

If this exception were to allow an opening, reopening or closing transaction to trade through an existing automated quotation, then the essence of the trade through rule would be entirely vitiated.

"(4) The transaction that constituted the trade-through was executed at a time when a protected bid was priced higher than a protected offer in the NMS stock. "

If an automated trading center presents an automated bid or offer, the assumption is that the automated trading center is operating properly and not malfunctioning. Consequently no bids or offers should cross under the rules of the NMS, i.e., trading centers are required to monitor and prevent locking or crossing quotations. If they occur then the trading center is either operating manually or in contravention to NMS rules.

(8) The trading center displaying the protected quotation that was traded through had displayed, within one second prior to execution of the transaction that constituted the trade-through, a best bid or best offer, as applicable, for the NMS stock with a price that was equal or inferior to the price of the trade-through transaction.

To allow a trade through based on posting time of less than one second between the execution and the best bid or offer would provide the time frame to be used in developing an algorithm which high technology well capitalized trading entities could effectively use to set prices. With the fastest computers today(available to well capitalized trading organizations), orders could be computed in nanoseconds, routed in microseconds and executed in milliseconds, all easily within the limits expressed in (8). The days of seconds for determining action in markets are history in an age of high program trading volumes.

From Pa 26: "Reproposed Rule 611(b) would set forth a variety of exceptions to make intermarket price protection as efficient and workable as possible. These would include an intermarket sweep exception, which would allow market participants simultaneously to access multiple price levels at different trading centers – a particularly important function now that trading in penny increments has dispersed liquidity across multiple price levels. The intermarket sweep exception would enable trading centers that receive sweep orders to execute those orders immediately, without waiting for better-priced quotations in other markets to be updated."

If the intermarket sweep is to be part of the adopted Regulation NMS, the DOB protection should be part of the regulation to prevent gaming the execution. Also the DOB protection will prevent further erosion of liquidity once the initial NBBO is executed if/when gaming the regulation is attempted.

From Pa. 36: "...
Effective spread statistics do not, of course, reflect all types of trading costs. They focus on the execution price of individual orders in comparison with the best quoted prices at the time orders are received. As a result, they do not capture trading costs that are associated with the short-term movement of quoted prices, or volatility. To further assist the Commission in evaluating the views of commenters, Commission staff also has analyzed short-term volatility for trading in Nasdaq and NYSE stocks.[55] Transitory volatility should be distinguished from fundamental volatility – price fluctuations associated with factors independent of market structure, such as earnings changes and other economic determinants of stock prices. The staff analysis found that transitory volatility is significantly higher for Nasdaq stocks than for NYSE stocks.[56] Excessive transitory volatility indicates a shortage of liquidity. Such volatility may provide benefits in the form of profitable trading opportunities for short-term traders or market makers, but these benefits come at the expense of other investors, who would be buying at artificially high or selling at artificially low prices. ..."

If depth of book protection is made available, then investors will be able to determine price structure; without such information the interests of very short term traders, i.e., those who trade by the second and rely on lack of price information are placed ahead of all others. Such price "noise" and transitory volatility could be eliminated while facilitating more price certainty for limit orders.

If Regulation NMS is to establish markets operating in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, then the benefits to companies seeking capital and investors seeking returns from an enterprise's success should take precedence over those seeking very short term (seconds to minutes) transitory gains from strictly trading. If the interests of traders continue to be favored over those of investors, then the underlying purpose of capital markets, to match those with capital with those seeking capital, will be subverted and its primary function, to determine price, corrupted. Further confidence in capital markets will continue to erode and investors will gravitate to other forms of investment, believing that stock markets exists for the benefit of those with the knowledge, capabilities and capital to effect their will in a system meant to serve their interests. Traders providing liquidity take risk to gain return but should not be given a structural advantage in their activity. Capital markets will attract more investors with alternatives when they believe that "markets" are not structured against their interests.

From Pa 36-37: "The second principal factual contention of commenters opposed to a trade-through rule is premised on the claim that there are fewer trade-throughs in Nasdaq stocks, which are not covered by any trade-through rule, than in NYSE stocks, which are covered by the ITS trade-through provisions.[57] One commenter asserted that, outside the exchange-listed markets, competition alone had been sufficient to create a "no-trade through zone."[58] To respond to these claims, the Commissions staff examined public quotation and trade data to analyze the incidence of trade-throughs for Nasdaq and NYSE stocks.[59] It found that the overall trade-through rates for Nasdaq stocks and NYSE stocks were, respectively, 7.9% and 7.2% of the total volume of traded shares.[60] When considered as a percentage of number of trades, the overall trade-throughs rate for both Nasdaq and NYSE stocks was 2.5%. In addition, the staff analysis found that the amount of the trade-throughs was significant – 2.3 cents per share on average for Nasdaq stocks and 2.2 cents per share for NYSE stocks.[61] "

Both Bloomberg and Archipelago, the commenters, are direct beneficiaries of increased trading resulting from momentum driven manipulated prices. Under current market operating conditions, higher prices attract increased trading in an attempt to profit from momentum moves in prices by trend followers, arguably the most prevalent group of computer driven and other very short term traders active in markets today. Congratulations to the SEC for effectively disposing of their comments as lacking credibility.

P 44: "In particular, reproposed Rule 600(b)(3) would require that the trading center displaying an automated quotation must provide an "immediate-or-cancel" ("IOC") functionality for an incoming order to execute immediately and automatically against the quotation up to its full size, and for any unexecuted portion of such incoming order to be cancelled immediately and automatically without being routed elsewhere. The trading center also must immediately and automatically respond to the sender of an IOC order. "

This capability is crucial to any investor or trader seeking to prohibit manipulation of orders by trading centers; this trading right is a significant leveling of the trading playing field currently denied investors/traders.

P 45: "a trading center would act reasonably in the current trading environment if it bypassed the quotations of another trading center that had repeatedly failed to respond to orders within a one-second time frame (after adjusting for any potential delays in transmission not attributable to the other trading center).[75]"

Higher prices for a trade could potentially result from executing automated quotes in coordinated fashion if other automated trading centers either did not respond or suddenly ceased to maintain existing automated quotes within the one second period. If computer driven bids and offers flooded all active automated trading centers at the same time, the effect could be an immediate shift of price level and could induce additional price movement in the same direction given sufficient capital to pierce resistance or support prices. High beta stocks or thinly traded stocks would be likely candidates for such manipulation. Trading centers with the fastest response time would likely flourish given the potential for profit to be created if slower trading center quotes, although still automated, could be crossed without fills at lower (higher, in the case of shorts) prices. Therefore any automated center which simultaneously experiences an increase (decrease, in case of shorts) in both bid and offer price levels must be required to fill the lower priced offers on buys (or the higher priced bids on sells) existing within a given time period prior to accessing the higher (or lower) price levels to prohibit development of a false demand (or supply) scenario. DOB protection should also be provided to all quotes within the same time frame for a given percentage of NBBO determined by statistical analysis of bid and offer prices.

P 48 "Finally, an automated trading center must adopt reasonable standards limiting when its quotations change from automated quotations to manual quotations, and vice versa, to specifically defined circumstances that promote fair and efficient access to its automated quotations and are consistent with the maintenance of fair and orderly markets. "
And:
"The requirement that automated quotations cannot be switched on and off except in specifically defined circumstances is particularly intended to assure that hybrid markets do not give their members, or anyone else, overbroad discretion to control the automated or manual status of the trading center's quotations, which potentially could disadvantage less favorably situated market participants. Changes from automated to manual quotations, and vice versa, must to subject to specific, enforceable limitations as to the timing of switches. For a trading center to qualify as entitled to display any protected quotations, the public in general must have fair and efficient access to a trading center's quotations."

For the fair operation of trading centers when changing from manual to automated mode and vice versa, strict uniform rules should dictate. Otherwise switching from one to the other could favor insiders.

Also if an automated trading center switches any single security from automated to manual, then all securities at that trading center must be switched to manual for the duration of the condition prompting switching the single security. Otherwise if selective stocks were allowed to be switched to manual conditions, then trading in that stock, particularly if thinly traded or a high beta stock, could be coordinated to increase (or decrease) in price on automated markets using millisecond executions from black boxes(computer generated trading programs). Note that he converse condition could be created for short sales. Since a manual market quotation would not be protected, price could advance (or fall) without any real change in demand (or supply) but simply change based on price quotations without any trading at DOB levels prior to switch from automated to manual.

Price of thinly traded stocks could be manipulated on automated markets with black box trading in concurrence with a momentary switch from automated to manual at another trading center. The converse condition could exist for short

sales in declining market. Since the manual market quotation does not have to be available to all bids, the probability that other than insiders could get lower quote in rising market or higher quote in falling market is small.

"The requirement that automated quotations cannot be switched on and off except in specifically defined circumstances is particularly intended to assure that hybrid markets do not give their members, or anyone else, overbroad discretion to control the automated or manual status of the trading center's quotations, which potentially could disadvantage less favorably situated market participants. Changes from automated to manual quotations, and vice versa, must to subject to specific, enforceable limitations as to the timing of switches. For a trading center to qualify as entitled to display any protected quotations, the public in general must have fair and efficient access to a trading center's quotations."

This must be both true for the automated and the manual quotes; otherwise switching from one to the other could be a bonanza for the insiders at all others expense.

P. 49: "Nasdaq observed that quotations in many Nasdaq stocks are updated more than two times per second. It said that these frequent changes could lead to many false indications of trade-throughs and that eliminating these "false positives" would greatly reduce the percentage of transactions subject to a trade-through rule.[85]"

Nasdaq appears to be protecting its members interests by allowing flickering quotes to effect price progression in the direction of the flickering quotes. If there are flashing bids or offers at the inside market, it indicates that one or more parties are most likely attempting to thwart the current direction of the market by artificially introducing a flurry of bids or offers which are intended to produce no trades but a pause in executions.

P53: "Paragraphs (b)(5) and (b)(6) of reproposed Rule 611 set forth exceptions for intermarket sweep orders. ...The exception is fully consistent with the principle of protecting the best displayed prices because it is premised on the condition that the trading center or broker-dealer responsible for routing the order will have attempted to access all better-priced protected quotations up to their displayed size.[91]"

TRUST BUT VERIFY, CONTINUOUSLY AND ALWAYS!

Pa. 61 "Consequently, the Commission has decided to eliminate the proposed opt-out exception from the reproposal because it could severely detract from the benefits of intermarket order protection. "

Eliminating the opt-out exception is necessary to maintain fair and orderly markets where all participants have immediate access to automated trading centers AND IT PRECLUDES END-RUNNING THE REGULATION.

P 62: "To the extent that the interests of professional traders and market intermediaries in a broad opt-out exception conflict with those of investors, the interests of investors are entitled to take precedence. In this way, the NMS will fulfill its Exchange Act objectives to promote fair and efficient equity markets for investors and to serve the public interest. "

To effect fair and orderly markets, timely reporting of trade executions should be required; however NASDAQ marketmakers are NOT required to report trades when made; they can and do report trades after markets have closed for the regular sessions making supply and demand assessments impossible and therefore operating to <u>serve the marketmaker's/customer's interest over the public interest</u>. Further they regularly make closing prices trades after the close of the regular session, effectively empowering them to set prices after hours without competitive bids and offers present.

P. 63: "The Commission believes that two of the most important public policy functions of the secondary equity markets are to minimize trading costs for long-term investors and to reduce the cost of capital for listed companies. These functions are inherently connected, because the cost of capital of listed companies depends on the trading costs of those who are willing to accept the investment risk of holding corporate stock for an extended period. To the extent that the interests of professional traders and market intermediaries in a broad opt-out exception conflict with those of investors, the interests of investors are entitled to take precedence. In this way, the NMS will fulfill its Exchange Act objectives to promote fair and efficient equity markets for investors and to serve the public interest."

The primary purpose of capital markets is to provide a mechanism for employing capital in ongoing enterprises which provide goods and services. Professional traders have the right and the willingness to risk their capital in pursuit of profits but rules related to trading centers must be enforced to strengthen capital formation and investment and not trading profits. Speculators and/or firms with vested interests in trading profits should not determine rules in capital markets.

P 65 ""Automatically executable quotes, whether they are on the top of the book or up and down the book, should be protected[115] by the trade-through rule, and manual quotes should not be. This is a simple and technically easy idea to implement."

Interactive Brokers Group has the correct view of this issue and DOB quote protection can and should be made mandatory at any given instant in time. Currently the NYSE allows its specialist members to execute trades at prices known only to them as the NYSE does not widely acknowledge (provide) DOB information. Further the NYSE charges to access its Open Book information is more than any other trading center charges for its book. If data vendors offer the NYSE "Open Book" at all (and few do) it is at a substantial cost and is not available at most brokerage houses for retail accounts including Merrill Lynch, one of the largest brokers in the world. In effect there is no depth of book information available to the broadest section of investors from the NYSE, the largest equity market in the world. This situation is a travesty, an NYSE means of favoring certain traders/specialists and a significant disservice to most investors.

The Voluntary Depth Alternative would set up a process through which individual markets could choose to secure protection for their DOB quotations by disseminating them in the consolidated quotation stream. To implement this approach, the SRO participants in the market data Plans would need to establish a mechanism for individual markets to disseminate their quotations through the Plan processor and have them designated as protected quotations. The participants in the Nasdaq UTP Plan already have agreed on such a mechanism.[120] It provides that the future processor for the Plan should have the ability to collect, consolidate, and disseminate quotations at multiple price levels beyond the BBO from any participant that voluntarily chooses to submit such quotations. The participant would be expected to bear the costs of processing its additional information. If the Voluntary Depth Alternative were adopted and any individual market were willing to disseminate its DOB quotations through the Plan processors, the participants in each of the Plans would be expected to agree on a fair and equitable means to disseminate such quotations.

Since participants in the NASDAQ UTP Plan have agreed early in 2004 to a DOB mechanism, it appears to be a technically feasible alternative as indicated by Interactive Brokers. More importantly the DOB protected quotes present an opportunity to establish more liquid markets in equities by allowing market participants to ascertain the existing price structure, effective market stability and/or transient volatility, thereby enabling transaction decisions with greater certainty of achieving intended results without added costs which benefit third parties not part of the trade. As a corollary, trading centers may experience enhanced participation by market participants having greater confidence in executing orders. Increased probability of order execution outcomes enhances a trading center's attractiveness, all other factors held constant, i.e., when access costs and methodology/configuration are equal.

To evaluate the fairness and reasonableness of fees for DOB quotations if the Voluntary Depth Alternative were adopted, a discounted cash flow model with a recognition of the risk:return of a data management system with predictable volume and identifiable technical considerations may be useful. Analysis could include the volume of shares traded on the affected trading centers annually, the anticipated system cost to generate quotes and, using the current 10 year Treasury rate, the discounted net present value of the quotation system after periods from 5 to 10 years in length using various fees ranging from $.0001 to $.001 per share. If the net present value is positive or zero, consider that option as feasible. Then review all net present values and select those variable generated net present values closest to zero and identify the variables. Then rework the variables to further refine the options to reach the net present value closest to zero. Then add a profit margin reflecting the risk of return in a data management system necessary to produce such trade-related results. Given historical volumes and existing discount rates, the risk:return ratio may be much lower than investing in a new product or market.

With respect to adoption of the Voluntary Depth Alternative, with trade through protection granted to all trading centers, no effect would exist from DOB trade through protection at any given trade center as the total volume of shares at the NBBO existing on every trade center must be cleared before any further executions against BBO could occur on trade centers with DOB trade-through protection. Only after all volumes at the NBBO were executed would DOB trade-through protection have any effect on where additional executions would occur. Neither increased nor decreased fragmentation of liquidity has relevance in the efficient functioning of trading centers as mechanisms to produce results under Regulation NMS if <u>all trade centers with share volumes available at the NBBO are protected and those volumes must be depleted before any other priced shares can be executed against. If all trade center volumes at the NBBO are depleted and then trade centers with the next NBBO receive orders for executions against their then existing NBBO volumes until depleted and then continuing the cycle, market efficiency in terms of price discovery will be possible.</u> An effect that DOB trade through protection could produce is increased trading volume for the trade center that adopts trade-through protection since that trade center's quotes can not be traded through by seeking a trade centers with inferior quotes(perhaps submitted by a related party). Further a trade center which consistently operates at the NBBO should gain trading volume from competing trade centers without NBBO pricing, a desirable outcome of the trade-through rule, increased efficiency in price/demand/supply determination. However if there are no or few competing trade centers operating at the NBBO or there are access issues and if a trading entity has market power, i.e., the capital and technical expertise to affect prices, it may be able to manipulate prices on a single or a few trading centers by flooding the center(s) with both bids and offers in a single price direction as it clears the NBBOs existing in the direction it seeks price movement. However that strategy has risks of failure from others seeking to take full advantage of the price levels created.

Monopolization of trading in a single trading facility could occur if only one trading center adopted DOB trade-through protection and traders sought out its price certainty; consequently since competition for trading volume exists, DOB trade through protection at one trade center likely will prompt other trade centers to adopt DOB trade through protection to receive orders, assuming that access and fee conditions between competing trade centers are essentially equal or do not create an undue burden or benefit on the value of the execution to the trader.

Although a primary objective of the reproposed Trade-Through Rule is to increase displayed depth and liquidity in the NMS and thereby reduce trading costs for a wide spectrum of investors, an ancillary but extremely important function is to prevent manipulation of prices in high beta and thinly traded stocks subject to trading strategies employing black box and other trading methods. Currently trading "outside the inside" is commonplace and typical of trading strategies to move prices in a single direction. The trade through rule would either eliminate or significantly impact such trading efforts (at the very least, requiring additional risk capital to effect price movement assuming more than one trading center is automated and operating) and produce prices of equity based more on demand and supply in the marketplace and less on manipulation.

P. 81 "As discussed in the Proposing Release, the Commission continues to believe that it would be inappropriate to implement a complete prohibition against any trade-throughs, particularly given the realities of intermarket trading and order-routing in many high-volume NMS stocks.[146] The requirement of written policies and procedures, as well as the responsibility assigned to trading centers to regularly surveil to ascertain the effectiveness of their procedures and take prompt remedial steps, is intended to achieve the objective of eliminating all trade-throughs that reasonably can be prevented, while also recognizing the inherent difficulties of eliminating trade-through transactions that, despite a trading center's reasonable efforts, may occur due to random and accidental causes. The Commission requests comment, however, on whether this approach is sufficient to address enforceability concerns. In this regard, should the Commission, instead or in addition, explicitly prohibit trade-throughs absent an applicable exception? Could a prohibition against trade-throughs be fashioned that would establish a fair, effective, and workable standard to govern trading center conduct?

P 82: A trading center's automated order-handling and trading systems must be programmed in accordance with these policies and procedures. Finally, the trading center must take such steps as are necessary to enable it to enforce its policies and procedures effectively. For example, trading centers will need to establish procedures such as regular exception reports to evaluate their trading and order-routing practices. Such reports would need to be examined to affirm that a trading center's policies and procedures have been followed by its personnel and properly coded into its automated systems and, if not, to promptly identify the reasons and take remedial action.

Of course, surveillance is an important component of a trading center's satisfaction of its legal obligations. In the context of this rulemaking, paragraph (a)(2) of Rule 611 would reinforce the ongoing enforcement requirement by explicitly assigning an affirmative responsibility to trading centers to surveil to ascertain the effectiveness of their policies and procedures.

trading centers must regularly assess the continuing effectiveness of their procedures and take prompt action when needed to remedy deficiencies. "

Based on personal knowledge and experience, I conclude that an SRO would NOT timely and effectively monitor for trade-through violations; in the real world of securities trading, it is highly likely that the same elements which currently seek to manipulate price will seek to circumvent SEC rules to preserve momentum-generated trading activity which enriches many insiders, their clients and their associates. To not prohibit trade-throughs specifically in high beta and low volume stocks would be to invite massive violation of protected (automated) quotes, particularly if protected quote placement were not available to any trader, resulting in stock price manipulation through black box trading and other momentum inducing techniques. In effect to not restrict such activity would be to invite a huge increase in the behavior which the reproposed NMS rules seeks to curtail or eliminate. To believe that an SRO which currently does not follow its own rules with respect to high beta stocks, e.g., NASDAQ, would be prompted to maintain fair and orderly markets without a ban on trade-throughs is beyond foolish. To illustrate NASDAQ's past behavior related to such momentum producing trading activity, <u>review executions in Expedia from October 2002 through August 2003, to ascertain examples of outside the inside trading execution times with respect to real time technical trading patterns. Then, within the intraday time frames identified, review ownership concentrations, identity of traders and how they acted, as principals or agents and finally price patterns subsequent to the time of the momentum producting "outside the inside" trades. Since NASDAQ has refused to make execution information available without a court order, only the Commission can verify or refute conditions which have been demonstrated repeatedly in intraday trading conditions. The writer invites and requests that the Commission undertake a review of the identified equity for the identified time frame.</u> Although NASDAQ has refused to provide trade data to determine if momentum pricing patterns result from attacking technically significant intraday price resistance points, momentum based pricing patterns can be exhibited in many high beta stocks but proof is lacking since NASDAQ will not provide the execution data. Such <u>trading activity is an extremely discriminatory. The SEC should implement rules strictly prohibiting price manipulation techniques (perhaps with penalty of dissolution of the entity commiting the offense) and, lacking strict prohibition, should require IMMEDIATE remedial action, e.g., making the cost to comply, i.e., reduced profits from trading, much less than the cost of non-compliance, i.e., severe censure, restitution and treble damages to all adversely affected investors.</u>

<u>The effect of such offending trading practices will be long buried in a trading center history (as is the case now) and the benefits achieved by the offenders without any offseting cost if neither prohibition is made the rule nor immediate action not strictly required. Trade-through should not be allowed; penalties should be large enough that traders who unjustly have benefitted from such price pumping tactics (as they have mightily done for years) may risk ruin. Absent such prohibitions the current gamed system will not only prevail, it will prosper beyond anything seen</u>

<u>previously, including the stock market bubble of 1996-2000. The results will likely include further dimunation of the retail and other non-professional investor's role in capital markets.</u>

P 83: As discussed in section II.A.3 above, the exception for a "material delay" would give trading centers a self-help remedy if another trading center repeatedly fails to provide an immediate (within one second under current trading conditions) response to incoming orders attempting to access its quotes.

With respect to exceptions which the Commission seeks comment, please note that regardless of when a trade takes place, marketmakers on NASDAQ are not required to report the trade at any time during the trading day but can and do report trades grouped together at a formula based price <u>after</u> the regular day session, effectively hiding such late reported trades from public view. This practice is patently against the public interest, represents special privilege and obviates efforts to make markets transparent. This ongoing privilege for one group of traders and/or their customers is discriminatory and does not promote fair and orderly markets.

Pp. 84-85: "These additional limit orders must be marked as intermarket sweep orders to allow the receiving market center to execute the order immediately without regard to better-priced quotations displayed at other trading centers (by definition, each of the additional limit orders would meet the requirements for an intermarket sweep order). Paragraph (c) of Rule 611 would require that the trading center or broker-dealer responsible for the routing of an intermarket sweep order take reasonable steps to establish that orders are properly routed in an attempt to execute against all applicable protected quotations."

If all automated quotes, including DOB quotes, are protected regardless of what trading center they are located at, then the trade-through rule will be effective. If only the initial part of an order at the NBBO is taken at a particular trading center which subsequently does not then have the NBBO, gaming can occur as a minimal quantity could be set at the NBBO to capture the order which then could be filled far away from the market if the remaining portion of the order were not sent to the then existing trade center with the NBBO.

P. 85. "requirements for an intermarket sweep order). Paragraph (c) of Rule 611 would require that the trading center or broker-dealer responsible for the routing of an intermarket sweep order take reasonable steps to establish that orders are properly routed in an attempt to execute against all applicable protected quotations. "

This condition should be applied to DOB quotes to eliminate gaming the system as noted in previous comment.

P. 86-87: "The exception in paragraph (b)(7) of Rule 611 would facilitate other types of orders that often are useful to investors – benchmark orders. It would except the execution of an order at a price that was not based, directly or indirectly, on the quoted price of an NMS stock at the time of execution and for which the material terms were not reasonably determinable at the time the commitment to execute the order was made. A common example of a benchmark order is a VWAP order. "

One of the most egregious practices in equity trading is hiding of purchases and sales when made. To allow buyers and sellers to defer recognition of an execution, until long after it is made is gross favoritism for the privileged few. If the Commission allows such market distorting reporting to persist during this time of potentially great and cleansing change in our equity markets would be a capitulation to the special interests and against the operation in fair and orderly manner.

P. 88: "They must carry out a regular and rigorous review of the quality of markets to evaluate their order execution policies, including their decisions concerning the markets to which to route customer order flow.[152] "

Currently SROs are negligent in responding to perceived or potential trading abuses which may advantage those committing the abuses, including trading outside the inside spread on very low

volume to establish a new high for the day. Executions at prices outside the inside quotes on very low volume allow a perception that prices are leading in a particular direction when the execution may be an attempt to manipulate perceived demand based on the misconception, widely publicized, that an execution is above the current "market's" price spread. NASDAQ and NYSE outside the inside market trades, even when establishing new highs, are allowed with no indication that the promulgated "inside market" has no influence at what price an execution can occur. The result has been that the unsuspecting retail market participants who unwittingly believed that widely promulgated bid:asked prices restrict prices at which executions are allowed to take place at any given moment have been mislead. Consequently the practice of widely promulgating bid:asked prices without a continuing and constant warning that executions are allowed by the SROs outside the posted "inside market" prices has misrepresented how price was determined. Further to promulgate the existence of "a market" has been misleading and inaccurate since there is no "market" but many different entities where executions aremade, each with their own rules, a fact so overwhelmingly ignored and bypassed, it has been effectively hidden from the retail investing public.

Additionally on the NYSE in a thinly traded listed stock (e.g., EFD @ 1:02:41 PM on 1/19/05) orders which are transmitted may not posted for over two minutes, indicating that a "timing issue" exists in listed stocks by specialists who can decide when to post orders. This appears to be a quality of market issue with respect to certain specialists and/or stocks and requires more strict regulation. Additionally the NYSE will not disclose who the specialist is in such a matter, according to Tradestation Securities.

P 88 "Moreover, Rule 611 could not be used to justify the internal execution of retail orders by a market' maker at prices inferior to the best available quotations.
This result of Regulation NMS would be most helpful.

P 91 "The fees for access to quotations in Nasdaq stocks, as well as the absence of standards for quotations that lock and cross markets, have been the source of severe disputes among participants in the market for Nasdaq stocks for many years."

Reform is long overdue and now required to eliminate gross inequalities between market participants.

P. 97: "relatively inactive ATSs and market makers should be required to publish their quotations in an SRO trading facility, AND "an SRO without a trading facility, of which the NASD is currently the only one, should be required to ensure that any ATS or market maker is directly connected to most market participants before publishing its quotations in a display-only facility." And
"requiring all trading centers to make their best quotations available through a public intermarket linkage facility." And
"comment on whether an SRO without a trading facility, of which the NASD is currently the only one, should be required to ensure that any ATS or market maker is directly connected to most market participants before publishing its quotations in a display-only facility."
IF QUOTATIONS CAN NOT BE ACCESSED, THEY SHOULD NOT BE PROMULGATED.

If a Trading FACILITY can EXECUTE ORDERS FROM Its MEMBERS but specifically EXCLUDES quotes/trades from NON-MEMBERS, price would be likely manipulated.

P 99 "The NASD, as a national securities association, is subject to different regulatory requirements than a national securities exchange. It is responsible for regulating the OTC market (i.e., trading by broker-dealers otherwise than on a national securities exchange). Section 15A(b)(11) of the Exchange Act requires an association to have rules governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange that are published by a member of the association. Such rules must be designed to produce fair and informative quotations and to promote orderly procedures for collecting, distributing, and publishing quotations. The Exchange Act does not, however, require an association to establish a facility for executing orders against the quotations of its members."

Since the Exchange Act does not require an association to establish a facility for executing orders against the quotations of its members, it appears that the fair and orderly operation of markets principle can not be maintained. If association members can promulgate quotes which can not be exercised against, they appear to have the ability to set the bid asked spread at any arbitrary level.

P100: reproposed Rule 610(b)(1), therefore, ADF participants would be required to establish the necessary connectivity that would facilitate efficient access to their quotations.

IF THIS REPROPOSED RULE ENSURES THAT ANY QUOTE BE IMMEDIATELY ACCESSIBLE, FAIR AND ORDERLY MARKETS WILL BE FACILITATED. IF THIS REPROPOSED RULE DOES NOT ALLOW ACCESS TO ANY QUOTE, THEN THAT QUOTE SHOULD NOT BE PROMULGATED.

P 108-9: "Nasdaq submitted data regarding the frequency of locked and crossed markets. During a one-week period in March 2004, it found that markets for Nasdaq stocks were locked or crossed an average of 509,018 times each day, with an average of 194,638 of the locks and crosses lasting more than 1 second and an average duration of all locks and crosses of 3.1 seconds.[201] Nasdaq stocks currently are not subject to provisions discouraging intermarket locking or crossing quotations such as those contained in the ITS Plan. "

The commission did not identify an important condition, the frequency with which locked or crossed markets were biased in favor of increased, i.e., Bids greater than Asked, or decreased prices, Asked less than Bids. If this condition were reviewed, in specific high beta stocks, the commission would be able to ascertain if the purpose for crossing quotes was to artificially influence "market" prices in a particular direction. If significant skew was found, then the commission, or other regulatory body charged with maintaining Commission rules, could identify the parties most likely to benefit from the practice and take disciplinary actions. If Rule 610(d) seeks to maintain "fair and orderly" markets but allows NASDAQ members the opportunity to pick off specific price levels, e.g., resistance or support, with the intention of artificially moving prices, then the commission should fashion rules which would make such efforts expensive and unprofitable. Timeliness, seconds not hours, is most important since the damage done by such activity is swift and often severe to those on the other side of the trades.

No NASDAQ member should have the right to lock or cross markets or use rules to attacking prices in one direction or another. Neither are functions of the "invisible hand" of the market, often considered the image of a well functioning US equity markets by an unsuspecting public. The Commission should fashion market rules (not disparate parts which comprise an unmanageable whole) which facilitates represention the real supply demand conditions at a given price of an equity at any moment, without the affect of attempted price manipulation. Retail investors as a class are unaware of the mechanisms which NASDAQ members use in manipulating prices and therefore executions. Since locked or crossed quotes or automated price level attacks may be created by NASDAQ members operating for their own (and when acting as agents, their customers) benefit, the commission should adopt rules to make the practice unattractive.

P 110: "The Commission preliminarily believes, however, that an automated quotation is entitled to protection from locking or crossing quotations. When two market participants are willing to trade at the same quoted price, giving priority to the first-displayed automated quotation would contribute to fair and orderly markets."

If the widest class of market participants are allowed to post automated quotes, fair markets will be facilitated. However if automated quotes are primarily generated by market participants with market power, i.e., technology, capital and access, to unfairly influence price, then automated quotes will exacerbate existing problems of price manipulation.

P 112 "an SRO trading facility cannot be used simply as a conduit for the display of quotations that cannot be accessed fairly and efficiently through the SRO trading facility itself."

This is a necessity to achieve veracity of market prices based on existing market conditions and not allow special interests to alter pricing.

P 113-114: "SRO display-only facility" is defined in reproposed Rule 600(b)(71) as a facility operated by a national securities exchange or national securities association that displays quotations in securities, but does not execute orders against such quotations. For quotations in NMS stocks, this definition currently would encompass only the NASD's ADF.[205] Separate quotations displayed on an SRO trading facility and an SRO display-only facility must each be fully accessible.

As discussed in section III.A.1 above, trading centers that choose to display quotations in an SRO display-only facility would be required to bear the responsibility of establishing the necessary connections to afford fair and efficient access to their quotations. The nature and cost of these connections for market participants seeking to access the trading center's quotations would need to be substantially equivalent to the nature and cost of connections to SRO trading facilities.
a trading center's differential treatment of orders based on the identity of the party ultimately submitting an order through a member, subscriber, or customer of such trading center generally would be prohibited."

VERY GOOD!

P. 117: "Such rules (Rule 610(d)) would require the market participant responsible for displaying the locking or crossing quotation to take reasonable action to resolve the locked or crossed market. "

Trading centers should monitor bids and asked to preclude lock and cross quotes from promulgation. In case monitoring fails then timeliness of unlocking/uncrossing quotes is of paramount importance and automatically generated fines and censure should result (with opportunity for review later) and restitution considered later.

P206: "Reproposed Rule 611 would require a trading center (which includes national securities exchanges and national securities associations that operate SRO trading facilities, ATSs, market makers, and block positioners) to establish, maintain, and enforce written policies and procedures that are reasonably designed to prevent trade-throughs of protected quotations, and, if relying on an exception, that are reasonably designed to assure compliance with the terms of the exception. To qualify for protection, a quotation would be required to be displayed and immediately accessible through automatic execution."

Automatic order posting and execution capabilities must be widely available and non- discriminatory.

P. 209 "Comment is requested on whether extending trade-through protection to DOB quotations[450] would significantly increase the benefits of the reproposed Trade-Through Rule."

By protecting DOB after volumes at the NBBO have been exhausted by a sweep or other multiple bids or offers, the remaining existing bids or offers provide the price structure on which the source of such order could rely, thereby eliminating price manipulation after the inside bid or offer quantity had been exhausted. Protecting DOB should be mandatory as it would encourage limit orders which become the de facto inside spread if/when order volume requirements reach them and therefore

their prescence would provide additional price structure. For sweep orders, DOB protection would prevent favored bids or offers being taken prior to protected bids or offers which have been placed and likely would not have been placed without protection.

P 210: Voluntary Depth Alternative:
" For example, Market A may be displaying a best offer of 1000 shares at $10.00, and DOB offers of 2000 shares at $10.01 and 2000 shares at $10.02. With a reserve size
function, however, Market A may have an additional 1000 shares offered at $10.00 and an additional 2000 shares offered at $10.01, neither of which is displayed. Assuming the displayed offers of $10.00, $10.01, and $10.02 were protected quotations under the Voluntary Depth Alternative, Market B could execute a trade at $10.03 only by simultaneously routing an order to execute against the accumulated displayed size of the protected quotations at Market A. Market B therefore would be required to route a buy order, identified as an intermarket sweep order, to Market A with a limit price of $10.02 for a total of 5000 shares (the accumulated amount of the displayed size of protected quotations with a price of $10.02 or better at Market A). Under the priority rules currently in effect at electronic markets, undisplayed size has priority over displayed size at an inferior price. Accordingly, Market A would execute the 5000 share buy order as follows: 2000 shares at $10.00 (1000 displayed plus 1000 reserve) and 3000 shares at $10.01 (2000 displayed plus 1000 reserve). While Market B would have complied with the Rule, the displayed $10.02 offer at Market A would still go unfilled when Market B traded at $10.03. Comment is requested on the extent to which this outcome would detract from the benefits of the Voluntary Depth Alternative. "

Market B should complete the trade at the protected quotes, with a service fee for completing the transaction, and should not be able to profit from its position as order taker at the expense to the buyer. Market B by virtue of its taking the order, which order would likely not have been placed at the 10.03 level if a single unified market existed, should be allowed to charge a transaction fee but not be allowed to profit by its, Market B's, existence alone. The primary goal of NMS should be to eliminate the fragmentation in prices caused the various trading centers being allowed to trade securities with disregard for best bids and offers.

P. 212: "Every trade-through transaction potentially sends a message to market participants that their displayed quotations can be and are ignored by other market participants. When the total share volume of trade-through transactions that do not interact with displayed quotations reaches 8% and above for hundreds of the most actively traded NMS stocks, this message is unlikely to be missed by those who watched their quotations being traded through. "

This is clear, convincing and incontrovertible evidence of needed and overdue change.

P 213: "The average portfolio turnover rate for equity funds was 55%, meaning that the total purchases and sales of the securities they held total approximately $4.048 trillion.[457] A leading authority on the trading costs of institutional investors has estimated that in 2003 the average price impact experienced by investment managers in U.S. stocks ranged from 17.4 basis points for giant-capitalization stocks, 21.4 basis points for large-capitalization stocks, and up to 35.4 basis points for micro-capitalization stocks.[458] In addition, it estimated the cost attributable to adverse price movements while searching for liquidity for institutional orders, which often are too large simply to be presented to the market. Its estimate of search costs ranged from 13 basis points for giant capitalization stocks, 23 basis points for large capitalization stocks, and up to 119 basis points for micro-capitalization stocks. Assuming that the average price impact and search costs incurred across all stocks is a conservative 37.4 basis points,[459] the shareholders in U.S. equity mutual funds incurred implicit trading costs of $15.1 billion in 2003."

Increased average portfolio turnover rates demonstrates a clear tendency toward trading rather than investing. If an objective of the reproposed rules is to promote investor's interests, then any rules which reduce the potential for profits from strictly trading activity should be considered. A related result may be more stable fund operations and returns.

P. 214: "the benefits of improved depth and liquidity for the direct equity holdings of other types of investors, such as pension funds, insurance companies, and individuals, are not incorporated in the foregoing calculations. In 2003, these other types of investors held 78% of the value of publicly traded U.S. equity outstanding, with equity mutual funds holding the remaining 22%.[461] Assuming that these other types of investors experienced a reduction in trading costs that merely equaled the estimated reduction of trading costs for equity mutual funds, the assumed 5% improvement in market depth and liquidity could yield total trading cost savings of over $1.5 billion annually. Such savings would improve the investment returns of equity ownership, thereby promoting the retirement and other long-term financial interests of individual investors and reducing the cost of capital for listed companies. "

<u>The essential purposes of stock exchanges/associations has become subverted by the progression of securities industry commitment to enable its own growth and its participants to operate in a manner which does little to facilitate capital formation but produces income for market participants, at times at the (extreme) expense of unsuspecting market participants. Capital formation, a necessary function in a free and democratic society, becomes a significant but secondary function when compared to daily market operations.</u>

P224: "reproposed Access Rule would help achieve the statutory objectives for the NMS by promoting fair and efficient access to each individual market. By relying on private linkages, rather than mandating a collective intermarket linkage facility, the access provisions of reproposed Rule 610(a) and (b) would allow market centers to connect through flexible and cost effective technologies widely used in the markets today, particularly in the market for Nasdaq stocks. "

If private linkages are provided which allows the widest population of investors and traders non-discriminatory access to listing and accessing protected orders, then the intermarket operation could be efficient, barring any hidden constraints or priority conditions

With the trade-through rule in place the ability of those whose objective is to pump up prices would be diminished since they would necessarily have to route orders to take out all the intervening protected offers before having an execution (and print) at higher prices which would signal a point of momentum trading support. Significantly more capital would be required than is currently the case and risk that others would avail themselves of the prices set would arise.

P 226: "The restrictions on locking or crossing quotations in reproposed Rule 610(d) should promote fair and orderly markets. Reproposed Rule 610(d) thereby would address the concern that manual quotations may not be fully accessible and recognize that allowing automated quotations to lock or cross manual quotations may provide useful market information regarding the accessibility of quotations. The Commission preliminarily believes, however, that an automated quotation is entitled to protection from locking or crossing quotations."

P 227: "In reproposing Rule 610 and the amendment to Rule 301 of Regulation ATS, the Commission seeks to help ensure that securities transactions can be executed efficiently, at prices established by vigorous and fair competition among market centers. By enabling fair access and transparent pricing among diverse marketplaces within a unified national market, the Commission preliminarily believes that the access proposal would foster efficiency, enhance competition, and contribute to the best execution of orders for NMS securities."

P 232: "a locked market often does not actually represent two market participants willing to buy and sell at the same price because it is likely that the locking market participant is not truly willing to trade at the displayed locking price, but instead chooses to lock rather than execute against the already-displayed quotation to receive a liquidity rebate."

P 257:"the Commission preliminarily believes that, by prohibiting a trading center from imposing unfairly discriminatory terms that would prevent or inhibit the efficient access of any person through members, subscribers, or customers of such trading center, the reproposed rule would promote competition among trading centers. "

Although in general agreement with the above four sections, I believe that if ONLY one or a few trading centers were to survive, then gaming prices could relatively easily be accomplished through black box trading used to break technical resistance points and thereby promote momentum price pumping, as is now practiced widely in high beta stocks.

P.309 § 240.10b-10 Confirmation of transactions.

(B) In the case of any other transaction in an NMS stock as defined by § 242.600 of this chapter, or an equity security that is traded on a national securities exchange and that is subject to last sale reporting, the reported trade price, the price to the customer in the transaction, and the <u>difference, if any, between the reported trade price and the price to the customer.</u>

In theory, there should be no difference between the reported trade price and the price to the customer if excessive fees are eliminated.

P 311: § 240.12f-2 Extending unlisted trading privileges to a security that is the subject of an initial public offering.

(a) General provision. A national securities exchange may extend unlisted trading privileges to a subject security when at least one transaction in the subject security has been effected on the national securities exchange upon which the security is listed and the transaction has been reported pursuant to an effective transaction reporting plan, as defined in § 242.600 of this chapter.

This section is potentially very troubling if the unlisted stock dilutes listed holders equity without acknowledging that fact.