Submitted Via Email: rule-comments@sec.gov

January 26, 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:

On behalf of the Financial Information Services Division (FISD) of the Software & Information Industry Association (SIIA), I am pleased to submit the following comments regarding Regulation NMS (Release No. 34-50870; File No. S7-10-04).

First, thank you for the opportunity to comment on the reproposed Regulation NMS (Regulation). Given the extensive public dialogue over the course of the past year, FISD greatly appreciates the Securities and Exchange Commission (Commission) providing the opportunity for comment on the reproposed rule prior to further action.

FISD is a unique trade organization that offers a balanced and neutral business forum for exchanges, market data vendors and financial institutions to address and resolve issues related to the market data business and securities processing automation. Participants are responsible for their own strategic and commercial interests within FISD. Our role is to act as a neutral facilitator of the discussion and manager of the consensus agenda that emerges as a result. The organization is governed by a 27-member Executive Committee consisting of nine exchanges, nine vendors and nine user firms. A complete list of the FISD Executive Committee is available via the FISD web site (http://www.fisd.net/about/executive.asp).

Given the diversity of FISD membership and the broad objectives of the Regulation's proposals to modernize the regulatory structure of the U.S. equity markets, these comments are narrowly focused on the areas pertaining to market data—FISD specializes in the development of best practices built on broad consensus among varied market data industry participants. In summary, these comments focus on the following three areas: (1) opportunities for standardization of exchange policies and procedures; (2) traffic and capacity implications of Regulation NMS; and (3) the "Sub-Penny Rule."

1. Standardization of Exchange Policies and Procedures

FISD supports the establishment of Advisory Committees (Committees) for the Tape Plans governing the Securities Information Processors (SIPs) that consolidate quote and trade information, and we applaud the Commission's effort to streamline administrative processes which would reduce the burden on the entire market data industry. FISD concurs with the Commission's conclusion that these Committees would promote streamlining of the burdens on the industry associated with market data administration.

Greater industry participation in Tape Plan governance will likely result in more enlightened and streamlined policy approaches for each of the Tape Plans. But, it is also very desirable that these policies and practices be *standardized across* the Tape Plans. It is the sense of our membership that differences in administrative policies and procedures among the exchanges add to the collective administrative burden on the industry without providing any competitive advantage or service differentiation for the exchanges and Tape Plans.

In an effort to encourage uniformity in exchange and vendor administrative policies and procedures, FISD recently embarked upon the Business Issues Policy and Procedure Standardization project (BIPPS), an extensive industry-wide initiative that reflects the broad agreement across FISD members that such uniform standards are necessary. The goal of the BIPPS project is to develop voluntary best practice guidelines for exchange and vendor market data policies. Specifically, we are developing guidelines regarding the following four key priorities:

1) **Exchange data delay intervals –** Many exchanges specify a delay period after which their market data is not fee liable. These delay requirements vary across exchanges. We will recommend that all exchanges adopt the same delay interval thereby easing the technical and administrative burden on vendors and their subscribers.

2) **Subscriber Agreement streamlining –** Many exchanges require vendors to obtain exchange-specific subscriber agreements with each of their subscribers prior to initiating exchange service. Less burdensome standards should be adopted across the exchanges, potentially including: (a) click-through agreements for professional subscribers, (b) uniform subscriber agreement language across exchanges – similar to what exists today in the U.S. futures industry; and/or (c) elimination of the agreement requirement based on protections contained in the vendors' own agreements and vendor indemnification of the exchanges.

3) **Billing and Reporting Period Issues –** Standards should be adopted regarding billing and report timing. Examples of these standards include uniform treatment of a partial month's service (e.g., no pro-ration, pay for the entire first month of service and none of the final month of service) and adoption of uniform dates for billing and reporting cut-offs.

4) **Unit of Count –** The BIPPS project seeks to recommend a uniform definition of the reportable and billable units that consumers and vendors must report to their information providers for the purposes of market data fee calculation and billing.

We expect that these best practice recommendations will be finalized within the next few months. Following the completion of best practice recommendations in each of these areas, FISD will promote them to exchanges and vendors globally (including the Tape Plans for U.S. equities), seeking broad implementation and helping with the implementation process as necessary.

Given the breadth of the BIPPS process and its support across the market data industry, we urge that the Tape Plans be open to incorporating these recommendations into their policies and practices as a way to increase policy standardization across data providers.

2. Traffic and Capacity Implications of Reg NMS

There are several aspects of the Trade-through and Market Data sections of Regulation NMS as reproposed that could result in increased quotation traffic that the market data industry would need to accommodate. In this way, Regulation NMS could have a significant impact on entities beyond exchanges, markets, and tape plans that are the subject of the rules. Traffic increases will constitute a major burden on market data vendors and consumers and should be carefully factored into the implementation time table for Reg NMS.

We raise this issue not in opposition to the Regulation or its various aspects, but rather, to ensure that the Commission has fully considered potential traffic and capacity impacts of the proposed new regulations. In the re-proposal, the Commission does not discuss any impact analysis that it may have done on the traffic and capacity effects of the proposal. FISD hopes that such analysis would be used by the Commission to inform the final rules and their implementation schedule.

FISD has identified the following areas of the Regulation that could conceivably lead to the generation of more message traffic:

- **Protection of market participant's Voluntary Depth-of-Book Quotes –** The Voluntary Depth Alternative would provide trade-through protection to depth-of-book information that was voluntarily submitted by a market center and was included in the consolidated quotation stream. If this option is adopted, the quote traffic originating from the tape plans (CTA, UTP) would likely increase as most, if not all, market centers elected to disseminate their depth-of-book data through the Plans. While much of this traffic is already being disseminated outside of the tape plans through market centers' order book feeds, these new tape plan feeds would be an additional traffic burden on vendor and user systems. Perhaps more important, market participants may move their quoting interest from "reserve" quotes that are not disseminated to displayed quotes that are disseminated to take advantage of the trade-through protection provided to displayed quotations. This could lead to an increase in quote traffic.

- **Increased Prevalence of Automated Quotations –** The proposal favors automated market center quotes in at least two ways: (1) Only automated quotations are protected from trade-through and (2) The revised market data revenue sharing formula would only provide quote credits for automated quotes. Therefore, under the proposal, market centers will have significant incentives to automate their quotations, if they have not already done so. While automation allows faster executions and response times from market centers' systems, it also potentially permits them to update their quotes more rapidly, leading to higher peak traffic loads.

- **The Revenue Sharing Formula –** The proposed revenue sharing formula in the Market Data section may encourage participants to quote more often in thinly-traded issues. The formula adds a market center's quotation time at the NBBO to the criteria for revenue sharing and the Security Income Allocation component of the formula increases the degree to which quoting (and trading) in thinly traded issues generates market data revenue for a market center. Taken together, these rules may lead participants to generate more quote traffic as they seek to position their quotations at the NBBO to gain market data revenue share. This could be most prevalent in thinly traded issues where the participant does not expect that posting its quote at the NBBO will lead to an immediate execution.

- **Dissemination of Automated Quotation Identifier –** The Trade-through proposal requires market centers to identify whether their quotations are automated or manual, a requirement that is not supported on exchange data feeds today. It is possible that additional messages will be generated as market centers update their quotes to indicate that a quotation previously classified as manual is now automated, or vice versa. The automated quotation identifier may also marginally increase the size of the messages disseminated by the tape plans, increasing the total bandwidth utilized during peak periods.

Again, we do not raise these issues as an impediment to implementation of the Regulation. Rather, we urge the Commission to further assess the potential impact prior to implementation of new regulations, and we hope that the final rules and the implementation dates reflect the results of this analysis.

3. Sub-Penny Rule Impact on Market Data

FISD believes that the impact of increasing sub-penny quoting and trading on market data traffic is substantial, and we applaud the reproposed "Sub-Penny Rule" prohibition for market participants from accepting, ranking or displaying orders, quotations, or indication of interest in a pricing increment smaller than a penny interests priced more than $1.00 per share.

In comments submitted to the Commission in 2003, FISD expressed concern about the increase in sub-penny quoting and trading and its impact on market data traffic and capacity. At that time, FISD highlighted significant concern among many FISD members—particularly among the market data vendor members—about the potential capacity requirements of sub-penny market activity and the potential financial burden on vendors, market participants, and ultimately investors. Further, at that time we encouraged the Commission to consider whether the impact of sub-penny quoting and trading on rising infrastructure costs is adequately offset by market quality benefits to investors and market participants. Therefore, FISD supports the “Sub-Penny Rule” as an attempt to limit the growth of excessive market data traffic, and we applaud the Commission for thoroughly evaluating this proposal and reaching this conclusion.

Again, thank you for the opportunity to comment on the reproposed Regulation NMS. If you have questions regarding these comments, or if you would like to discuss these comments in greater detail, please do not hesitate to contact me. I can be reached at 202.789.4465 or tdavin@siia.net.

Sincerely,

Tom Davin

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Software & Information Industry Association