

**SUMMARY OF SUBMITTED TESTIMONY
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ON PROPOSED REGULATION NMS**

Trade-Through Proposal

NASDAQ supports uniform regulation because it promotes fair competition and eliminates a “race to the regulatory bottom.” However, investors’ interests can be served best not by imposing a trade-through rule on the market where competition is the most intense (NASDAQ), but by eliminating the rule where it dampens competition (NYSE)

- The problems that a trade through rule can cause are clearly demonstrated in the market for listed securities – lack of Intermarket competition and limited freedom of choice
- Investors have benefited from this competition in the NASDAQ market through lower prices and a wider range of services

If the Commission believes it cannot eliminate the trade-through rule for listed securities, and thus can achieve uniformity only by imposing the rule on NASDAQ securities, it must ensure that its proposal does not inadvertently eliminate competition and deprive broker-dealers and their customers of the freedom of choice they enjoy today.

- The opt-out and automated/non-automated market exceptions if properly implemented should preserve freedom of choice and promote automated executions.

Market Access Proposal

Regulation NMS seeks to address many of the challenges posed by market fragmentation while reserving the benefits of competition.

- Access Fees – NASDAQ favors efforts to address, on a market-wide basis, the issue of ECN access fees, but NASDAQ is continuing to evaluate the possible impacts of the SEC proposal on market structure
- Access Standards - NASDAQ supports the goal of mandating linkages among market centers but notes the need for strict oversight of the relations between market centers and broker-dealers providing the linkages. NASDAQ believes that the proposal to enhance the fair access requirement for alternative trading systems (ATs) does not go far enough and endorses a broader proposal to apply the fair access standard to all ATs that provide their quotes to an SRO
- Locked/Crossed Markets - NASDAQ supports the SEC’s proposal but believes that an exception is necessary to the rule for the quotes of an automated market that lock or cross the quotes of a manual market, or a market that is experiencing a system delay or malfunction. The SEC needs to work closely with market centers and market participants to ensure that the rule is implemented and enforced consistently across markets

Market Data

The SEC should not use market data revenue alone to effect regulatory policy. To achieve regulatory excellence, the SEC must set high standards of regulation and then ensure that each SRO commits its share of the resources needed to meet those standards.

- The Commission should eliminate the current enticement to engage in substandard regulatory behavior through market data revenue sharing programs
- The Commission should also reduce the role of national market system plans by reducing the amount of data subject to those plans and increasing the amount of data that SROs could distribute independently. That would reduce the importance of plan allocation formulas, increase competition among markets, and prompt market data vendors to offer innovative new data products.

- Simply modifying the existing formulas is insufficient. Although the proposed modifications appear well designed to accomplish the goal of rewarding active quoting across all securities, the new formula is likely to substitute a new set of distortions for the existing ones

Sub-Penny Proposal

- NASDAQ endorses the SEC proposal to ban most sub-penny quoting, with an exception for stocks priced below one dollar. The proposal stems directly from recommendations made to the Commission by NASDAQ last year.