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Summary of Testimony of Michael LaBranche

before the

Securities and Exchange Commission

concerning

Proposed Regulation NMS

(April 21, 2004)

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I am Michael LaBranche, Chief Executive Officer and President of LaBranche & Co. Inc, the parent of LaBranche &Co., a New York Stock Exchange specialist firm. I also serve as a Governor of the NYSE and a member of the Exchange's Market Performance Committee. I also am a board member of the Securities Industry Automation Corporation. My testimony today is on behalf of my firm and on behalf of The Specialist Association of the NYSE, of which my firm is a member.

The Commission's Release proposing Regulation NMS examines the history of inter-market price protection for listed securities and notes the absence of any trade-through principle in the markets for Nasdaq securities. The Commission's renewed interest seems to stem largely from the growth of alternative trading systems and electronic communications networks (ATSs and ECNs), concerns about the existing system of trade-through protection for listed stocks, and advances in the technological means by which trading can be effected and orders can be rerouted to simplify and speed up inter-market price protection.

First, all "order execution facilities" would be required to adopt and enforce anti-trade-through procedures.

Second, anti-trade-through principles would be extended to trading in Nasdaq stocks.

Third, the Commission would except transactions that take place in "automated order execution facilities" (which I will refer to as "fast" markets) at prices slightly inferior to bids and offers displayed by "non-automated order execution facilities" (or "slow" markets, below). I refer to this exception below as the "fast market exception."

Fourth, the Commission would except from anti-trade-through procedures trades for the account of a broker-dealer that chooses to "opt-out" or for the account of a customer who consents to "opting out" of those procedures. I refer to this exception below as the "opt-out exception."

Anti-trade-through rules are good for public investors, particularly small investors. They bolster well-accepted "best execution" principles. Our existing means of providing trade-through protection in the markets for listed stocks can and should be improved. It seems wise to me to extend these same protections to trading in Nasdaq stocks.

I am concerned, however, that the fast market exception could damage the auction market process of the NYSE. The NYSE, as you know – and can see by examining its statistics – is quite simply the best market in the world. It typically takes the lead in generating and displaying to the world the highest bid prices and the lowest offer prices for its listed securities; it effects transactions in those securities at the best prices virtually all of the time; it regularly provides price improvement to customer orders over the prices of bids and offers displayed not only from the NYSE, but from any market; it seamlessly integrates the negotiation and effectuation of very large trades into the continuous auction of smaller trades in a way that assures complete fairness to all market participants; and it provides price continuity, a smoothing of price changes, and freedom for investors from undue volatility to a degree matched by no other market. How do you imagine that we do this?

In sum, our order handling and execution systems and rules attract to our floor the vast bulk of all orders to buy or sell our stocks, and most indications of buying and selling interest in those stocks that have not matured into buy or sell decisions in our securities throughout each trading day. We queue those orders for execution fairly and give attention, through our specialists, to the existence of buy and sell interest expressed at one time during the trading day and seek out that interest when later contra-side interest presents itself. We provide immediate executions when such executions are desired, but otherwise constantly seek to improve the execution prices available – and often succeed. Our process has long accommodated large trades while protecting the interests of smaller customers and provided the environment needed – without halting trading – to permit assembly, negotiation and execution of such trades.

How will the fast market exception to the contemplated anti-trade-through procedures affect us? It may force us to abandon certain auction market principles to become a "fast" market. To do otherwise would permit our competitors to effect trades away from us at prices inferior to those we offer. We will work with the Commission to try to ensure that the definition of "fast" market enables us to continue to perform our auction function in a way that provides the best prices to all investors, large and small. Not just the best price *visible* in the quote display, but the best price *available*.

Finally, I want to urge the Commission to back away from the idea of an opt-out exception. I can understand why, for various reasons, a broker-dealer or an institutional customer might wish to transact at a price inferior to displayed prices. I am concerned, however, that an opt-out exception would have adverse effects on those who are bypassed by opt-out executions, especially small investors. I also think that this exception would have an enormously negative effect on the confidence of investors generally in the fairness and integrity of our markets. For these reasons, the proposed opt-out exception should be abandoned.

I would be happy to elaborate on any aspect of my testimony today and to answer any questions that you may have.

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