

TESTIMONY OF KIM BANG
ON BEHALF OF BLOOMBERG L.P.
AT HEARINGS BEFORE THE SECURITIES AND EXCHANGE COMMISSION
ON PROPOSED REGULATION NMS

GOOD MORNING. MY NAME IS KIM BANG. I AM PRESIDENT OF BLOOMBERG TRADEBOOK LLC, A WHOLLY OWNED SUBSIDIARY OF BLOOMBERG L.P. THANK YOU FOR THE OPPORTUNITY TO PARTICIPATE IN THIS IMPORTANT HEARING AND TO COMMENT ON PROPOSED REGULATION NMS. I APPLAUD BOTH THE COMMISSIONERS AND THE COMMISSION STAFF FOR THEIR THOUGHTFUL PREPARATION OF THE REG NMS PROPOSAL.

BLOOMBERG TRADEBOOK IS A GLOBAL ELECTRONIC AGENCY BROKER AND AN ECN. OUR PRIMARY OBJECTIVE IS TO PROVIDE DIRECT-MARKET-ACCESS TRADING TO CLIENTS OF THE BLOOMBERG PROFESSIONAL SERVICE. IN THE CASE OF EQUITY SECURITIES, WE HAVE DONE THIS BY AGGREGATING AND CONSOLIDATING MULTIPLE LIQUIDITY VENUES — THAT IS, EXCHANGES AND OTHER MARKET CENTERS — INTO A SINGLE TRADING MONITOR FOR EACH SECURITY. WE GIVE OUR CLIENTS THE ABILITY TO SEEK BEST EXECUTION, USING THE TRADING ANALYTICS, DATA AND CONNECTIVITY AVAILABLE ON BLOOMBERG TRADEBOOK.

WE ARE FIRM BELIEVERS IN THE OBJECTIVES OF THE SECURITIES ACTS AMENDMENTS OF 1975 — EFFICIENCY, COMPETITION, TRANSPARENCY, BEST EXECUTION AND DIRECT INTERACTION OF INVESTORS' ORDERS. WE

BELIEVE THE COMMISSION'S PROPOSED REG NMS TAKES POSITIVE STEPS TOWARD FURTHERING THOSE GOALS.

1. QUOTING IN SUB PENNIES

WE SUPPORT THE COMMISSION'S DECISION TO BAN QUOTING IN SUB PENNIES. BLOOMBERG TRADEBOOK HAS NEVER ENABLED ORDERS TO BE DISPLAYED OR TRADED IN ITS SYSTEM IN INCREMENTS OF LESS THAN A PENNY, AND FOR GOOD REASON. OUR CLIENTS BELIEVE THAT QUOTING IN SUB PENNIES IS USED, NOT FOR BONA FIDE PRICE IMPROVEMENT, BUT TO JUMP AHEAD OF THEIR LIMIT ORDERS. IN CONJUNCTION WITH THE PUBLICATION FOR COMMENT OF REG NMS, WE RECENTLY CARRIED OUT AN INFORMAL SURVEY OF OUR BUY-SIDE CLIENTS. OF THE 158 RESPONSES WE RECEIVED, 145 SAID THEY OPPOSE QUOTING AND TRADING IN SUB PENNIES.

2. ACCESS FEES

WE APPLAUD THE COMMISSION'S EFFORT TO REDUCE ACCESS FEES, BUT WE WOULD RATHER SEE THEM ELIMINATED ENTIRELY. THE HARM DONE BY ACCESS FEES TO MARKET STRUCTURE OCCURS IN THREE WAYS. FIRST, ACCESS FEES LEAD TO LOCKED MARKETS. SECOND, ACCESS FEES PERPETUATE PAYMENT FOR ORDER FLOW. THIRD, ACCESS FEES REWARD "SLOW" MARKET BEHAVIOR, THAT IS, DELAYING THE ROUTING OF CUSTOMER MARKET ORDERS SO AS TO INTERNALIZE THE TRADE AND CAPTURE THE ACCESS FEE OR FEES. BLOOMBERG TRADEBOOK CHARGES ACCESS FEES BECAUSE WE MUST PAY OUR COMPETITORS' ACCESS FEES ON ORDERS ROUTED TO THEM. FOR THAT REASON,

WE CANNOT AFFORD TO FORGO ACCESS FEES UNILATERALLY, BUT WE WOULD BE VERY HAPPY TO SEE THEM BANNED OUTRIGHT.

WE ARE TROUBLED, HOWEVER, BY WHAT THE COMMISSION HAS PROPOSED. BLOOMBERG TRADEBOOK AND OTHER ECNs AND MARKET MAKERS WOULD BE ALLOWED TO CHARGE 10 CENTS PER HUNDRED SHARES AS AN ACCESS FEE. ON TOP OF THAT, AN EXCHANGE WOULD BE ALLOWED TO CHARGE ANOTHER 10 CENTS, WITH AN AGGREGATE CAP ON THE COMBINED ACCESS FEES OF TWENTY CENTS PER HUNDRED SHARES. THE UNINTENDED CONSEQUENCE OF THE PROPOSAL WOULD BE TO PLACE BLOOMBERG TRADEBOOK AND OTHER ECNs AT A SEVERE AND UNJUSTIFIABLE COMPETITIVE DISADVANTAGE TO NASDAQ'S SUPERMONTAGE AND THE ARCHIPELAGO EXCHANGE FOR BROKER-DEALER LIMIT-ORDER FLOW.

UNDER THE PROPOSAL, IT SEEMS IN THE CASE OF NASDAQ STOCKS THAT ORDER-ENTRY FIRMS AND MARKET MAKERS COULD CHARGE AN ACCESS FEE *ONLY* WHEN THEY DISPLAY ATTRIBUTABLE LIMIT ORDERS ON NASDAQ'S SUPERMONTAGE OR THE ARCHIPELAGO EXCHANGE. THE ECONOMIC EFFECT OF THIS PROPOSAL, IF OUR UNDERSTANDING IS CORRECT, WOULD LIKELY BE TO FORCE BLOOMBERG TRADEBOOK INTO EITHER EXITING THE ECN BUSINESS OR REGISTERING AS AN EXCHANGE. BLOOMBERG TRADEBOOK IS RELUCTANT TO REGISTER AS AN EXCHANGE FOR THREE REASONS.

FIRST, TO BECOME AN EXCHANGE WOULD DRASTICALLY ALTER OUR RELATIONSHIP WITH OUR CUSTOMERS — WE WOULD HAVE TO BECOME

THEIR REGULATOR INSTEAD OF THEIR AGENT. SECOND, BY BECOMING AN EXCHANGE WE WOULD LOSE THE EXCHANGE ACT PROTECTIONS AGAINST UNFAIR DISCRIMINATION AND BURDENS ON COMPETITION WE CURRENTLY HAVE AS A NASDAQ MEMBER. THE THIRD REASON IS THE COST OF ESTABLISHING AND MAINTAINING THE REGULATORY APPARATUS OF AN EXCHANGE, WHICH WOULD BE CONSIDERABLE.

THE “FAIR” ACCESS PROVISIONS WOULD CONSTITUTE, IN YET ANOTHER WAY, A RADICAL DEPARTURE FROM WHAT IS NOW REQUIRED OF ECNs. TODAY, AN ECN THAT ACCOUNTS FOR 20% OF THE TRADING VOLUME IN ONE OR MORE SECURITIES MUST, WITH RESPECT TO THOSE SECURITIES, ESTABLISH WRITTEN STANDARDS FOR PARTICIPATION AND MUST APPLY THEM IN AN EVEN-HANDED WAY TO ALL PARTICIPANTS AND ACCESS BROKERS ALIKE. UNDER THE NEW PROPOSAL, SEVERAL NEW REQUIREMENTS WOULD APPLY. THE FAIR-ACCESS THRESHOLD WOULD BE REDUCED FROM 20% TO 5%. IT WOULD NOT RELATE JUST TO THE SECURITY OR SECURITIES IN QUESTION. INSTEAD, ONCE AN ECN PASSED 5% WITH RESPECT TO ANY SINGLE SECURITY, THE FAIR-ACCESS STANDARD WOULD APPLY TO ALL SECURITIES QUOTED OR TRADED ON THE ECN.

AS A RESULT, ECNs WOULD LOSE THE ABILITY TO OFFER GRADATIONS IN THEIR FEES. AS WE UNDERSTAND THE PROPOSAL, ECNs COULD NOT USE PRICING TO INCENT LARGE PARTICIPANTS TO GIVE THEM MORE ORDER FLOW. INSTEAD, ECNs WOULD HAVE TO GIVE, IN EFFECT, MOST-FAVORED-NATION PRICING TO ALL PARTICIPANTS, INCLUDING ACCESS BROKERS.

FURTHERMORE, IT DOES NOT APPEAR THAT THE PROPOSED STANDARDS WOULD APPLY EQUALLY TO ALL ATsS. THE PROPOSED ACCESS STANDARDS WOULD NOT, AS WE UNDERSTAND THEM, APPLY TO ATsS THAT CROSS TRANSACTIONS PERIODICALLY AND ACCOUNT FOR 5% OR MORE OF THE TRADING VOLUME IN ONE OR MORE SECURITIES.

THE RELEASE DOES NOT ADEQUATELY EXAMINE THE ECONOMIC AND COMPETITIVE EFFECTS OF THE PROPOSED ACCESS RULES. WE BELIEVE THE PROPOSAL WOULD INSTITUTIONALIZE ACCESS FEES AT A SLIGHTLY LOWER LEVEL THAN WHERE FREE MARKET COMPETITIVE FORCES HAVE TAKEN THEM. IN DOING SO, HOWEVER, THE PROPOSAL WOULD SIGNIFICANTLY AND NEEDLESSLY REDUCE COMPETITION BETWEEN MARKET PARTICIPANTS AND MARKET CENTERS AND ALSO BETWEEN ATTRIBUTABLE AND NON-ATTRIBUTABLE ORDERS.

3. MARKET DATA

WE SUPPORT THE COMMISSION'S PROPOSAL TO CHANGE THE FORMULA FOR CALCULATING MARKET DATA REVENUES. WE QUESTION, HOWEVER, WHETHER THESE REVENUES SHOULD BE AVAILABLE ONLY TO SROs. THIS SPECIAL CURRENCY, WHICH THE EXCHANGES USE AS A WEAPON IN COMPETING FOR ORDER FLOW, SHOULD NOT BE THE EXCLUSIVE PROVINCE OF EXCHANGES, WHICH HAVE THEIR OWN SKEWED INCENTIVES THAT DO NOT NECESSARILY SERVE THE PUBLIC INTEREST, PARTICULARLY AS SEVERAL OF THEM HAVE BECOME FOR-PROFIT ENTITIES.

IN ITS EARLIER CONCEPT RELEASE ON MARKET DATA, THE COMMISSION NOTED THAT MARKET DATA SHOULD BE FOR THE BENEFIT OF THE INVESTING PUBLIC. INDEED, MARKET DATA ORIGINATES WITH SPECIALISTS, MARKET MAKERS, BROKER-DEALERS AND INVESTORS. THE EXCHANGES AND THE NASDAQ MARKETPLACE ARE NOT THE SOURCES OF MARKET DATA, BUT RATHER THE FACILITIES THROUGH WHICH MARKET DATA ARE COLLECTED AND DISSEMINATED.

EVERY INVESTOR WHO BUYS AND SELLS STOCKS HAS A LEGITIMATE CLAIM TO THE OWNERSHIP OF THE DATA AND LIQUIDITY HE OR SHE PROVIDES TO MARKET CENTERS. FUNNELING EXCLUSIVE LIQUIDITY INFORMATION TO EXCHANGE MEMBERS AND FUNNELING MARKET DATA REVENUES TO EXCHANGES AND NASDAQ AND NOT TO INVESTORS SHIFTS THE REWARDS FROM THOSE WHO TRADE TO THOSE WHO FACILITATE TRADING.

MARKET DATA IS THE OXYGEN OF THE NATIONAL MARKET SYSTEM. RATHER THAN PROVIDING AN EXCLUSIVE INFORMATIONAL ADVANTAGE AND ANTI-COMPETITIVE WINDFALL TO A SELECT FEW, MARKET DATA SHOULD BE WIDELY DISSEMINATED FOR ALL INVESTORS TO SEE AT A REASONABLE PRICE.

UNDER THE CURRENT SYSTEM, MARKET DATA REVENUES PROVIDE SROs WITH FUNDS TO COMPETE WITH OTHER EXECUTION CENTERS. FOR EXAMPLE, ARCHIPELAGO HOLDINGS RECENTLY FILED AN IPO REGISTRATION STATEMENT WITH THE COMMISSION IN WHICH IT LISTED SOME \$23 MILLION FOR

2003 REVENUE FROM MARKET DATA. THIS WAS NET OF \$7.5 MILLION PAID TO THE PCX FOR MARKET REGULATION SERVICES. ARCHIPELAGO FURTHER STATED THAT IT USES THIS REVENUE TO COMPETE WITH NASDAQ, THE NYSE AND ECNs, SUCH AS TRADEBOOK. THAT IS, THE MARKET DATA REVENUES ARCHIPELAGO RECEIVES AS AN EXCHANGE ARE, IN EFFECT, GOVERNMENT-SANCTIONED SUBSIDIES THAT CONFER AN UNFAIR COMPETITIVE ADVANTAGE ON ARCHIPELAGO AND SIMILARLY SITUATED SROs.

THE COMMISSION HAS NEVER REQUIRED THE SROs TO RELATE THEIR MARKET DATA FEES TO THE ACTUAL COSTS OF COLLECTING AND DISSEMINATING THE DATA. THE RESULT IS A GRAVY TRAIN THAT HARMS INVESTORS THROUGH INDEFENSIBLE MARKET-DATA FEES AND RESULTING COMPETITIVE DISTORTIONS. IT IS BAD FOR THE MARKETS AND BAD FOR INVESTORS AND IT SHOULD COME TO AN END.

IN ADDITION TO QUESTIONS REGARDING WHO OWNS MARKET DATA AND WHO SHARES IN THE REVENUE AND THE SIZE OF DATA FEES, WE BELIEVE THE COMMISSION OUGHT ALSO TO REVISIT HOW MUCH MARKET DATA SHOULD BE MADE AVAILABLE TO INVESTORS. HERE, DECIMALIZATION HAS BEEN THE WATERSHED EVENT. GOING TO DECIMAL TRADING HAS BEEN A BOON TO RETAIL INVESTORS. IT HAS BEEN ACCOMPANIED, HOWEVER, BY DRASTICALLY DIMINISHED DEPTH OF DISPLAYED AND ACCESSIBLE LIQUIDITY. WITH A HUNDRED PRICE POINTS TO THE DOLLAR, INSTEAD OF EIGHT OR SIXTEEN, THE INFORMATIONAL VALUE AND AVAILABLE LIQUIDITY AT THE BEST BID AND OFFER HAVE DECLINED SUBSTANTIALLY.

PARTICULARLY GIVEN THE EFFECTS OF DECIMALIZATION, ALLOWING THE NYSE, FOR EXAMPLE, TO HOLD MARKET DATA AND LIQUIDITY BACK FOR THE BENEFIT OF ITS FLOOR MEMBERS IS AGAINST THE PUBLIC INTEREST, WHICH THE CONGRESS INTENDED THE COMMISSION TO PROTECT AND DEFEND. THE COMMISSION HAS HEARD COMPLAINTS BEFORE ABOUT THE NYSE AUCTION PROCEDURES THAT ALLOW HIDDEN AGENCY AND SPECIALIST ORDERS HELD IN THE CROWD TO HAVE PRICE-TIME PRIORITY OVER ORDERS DISPLAYED VIA THE PUBLIC QUOTATION SYSTEM. THESE FLOOR PROCEDURES GIVE NYSE MEMBERS AN UNFAIR OPPORTUNITY TO JUMP AHEAD OF, OR TO “PENNY”, PUBLICLY DISPLAYED LIMIT ORDERS AND TO “GO ALONG”, OR HITCH A RIDE, ON LARGE INSTITUTIONAL MARKETABLE ORDERS.

IN RESPONSE TO DECIMALIZATION, THE COMMISSION SHOULD RESTORE LOST TRANSPARENCY AND LIQUIDITY BY MANDATING GREATER REAL-TIME DISCLOSURE BY MARKET CENTERS OF LIQUIDITY AT LEAST SIX CENTS ABOVE AND BELOW THE BEST PRICES. GIVEN THE INCENTIVES OF A SLOW MARKET SUCH AS THE NEW YORK STOCK EXCHANGE TO HIDE QUOTATION INFORMATION AND TO BLOCK DIRECT ACCESS TO LIQUIDITY, THE REAL-TIME DISCLOSURE OF LIQUIDITY SHOULD NOT BE LEFT TO “MARKET FORCES”, WHICH CAN WORK IN THIS INSTANCE ONLY IF DISCLOSURE IS MANDATED. THIS WOULD RESTORE THE TRANSPARENCY AND DIRECT ACCESS INVESTORS HAD BEFORE THE ADVENT OF DECIMALIZATION.

4. TRADE THROUGHGS

WE SHARE WITH SINCERE PROPONENTS OF TRADE-THROUGH RULES A VISION OF A NATIONAL MARKET SYSTEM THAT PROMOTES ORDER INTERACTION AND TREATS ALL ORDERS AND ALL INVESTORS FAIRLY. WE EMBRACE WHOLEHEARTEDLY A MARKET STRUCTURE THAT PROTECTS ALL PARTICIPANTS, LARGE AND SMALL. WERE A TRADE-THROUGH RULE EFFECTIVE AND NECESSARY TO ACHIEVE THESE ENDS, WE WOULD SUPPORT IT WITHOUT RESERVATION.

WE SUGGEST THAT, WITH IMPLEMENTATION OF THE COMMISSION'S PROPOSALS REGARDING SO-CALLED FAST MARKETS, A TRADE-THROUGH RULE WILL NO LONGER BE NECESSARY. THERE IS NO NEED TO PROTECT A FAST MARKET AGAINST TRADE-THROUGHGS BECAUSE, BY AND LARGE, THEY DO NOT HAPPEN TO FAST MARKETS. A LOOK AT THE RECORD OF THE CURRENT TRADE-THROUGH RULE IS INSTRUCTIVE.

IN THE CASE OF NYSE-LISTED STOCKS, THE CURRENT TRADE-THROUGH RULE HAS NOT SERVED INVESTORS WELL. IT HAS STOOD IN THE WAY OF INNOVATIVE TECHNOLOGY AND DETERRED INVESTORS FROM OBTAINING DIRECT ACCESS TO MARKET DATA AND LIQUIDITY. AS ARCHIPELAGO'S GERRY PUTNAM HAS TESTIFIED, THE TRADE-THROUGH RULE IN PRACTICE HAS BEEN A ONE-WAY STREET, WITH THE NYSE ITSELF AS THE HEAVY-HANDED TRAFFIC COP. TO BE SURE, THE NYSE GOES AFTER REGIONAL MEMBERS THAT TRADE THROUGH NYSE PRICES. NONETHELESS, THE NYSE'S SPECIALISTS ROUTINELY

TRADE THROUGH BETTER PRICES ON OTHER MARKETS AND, AS A PRACTICAL MATTER, THEY DO SO WITH IMPUNITY.

FOR THEIR PART, THE REGIONAL MARKET CENTERS TEND TO COMPLY WITH THE CURRENT TRADE-THROUGH RULE WHILE AT THE SAME TIME THEY ARE NOT ABLE TO PROTECT THEIR CLIENT LIMIT ORDERS FROM BEING TRADED THROUGH BY THE PRIMARY MARKET. THEY ARE FURTHER DISADVANTAGED BECAUSE THEY ARE NOT PERMITTED TO EXECUTE INCOMING ORDERS ROUTED FOR EXECUTION AGAINST THEIR CUSTOMER LIMIT ORDERS WHEN THOSE ORDERS ARE DISPLAYED AND AVAILABLE, BUT AWAY FROM THE NBBO. THE INTERMARKET TRADING SYSTEM TRADE-THROUGH RULE REQUIRES THAT REGIONAL EXCHANGES AND ECNS REROUTE THOSE ORDERS TO THE PRIMARY EXCHANGE.

IN THE CASE OF NASDAQ-LISTED STOCKS, WE AT BLOOMBERG TRADEBOOK HAVE PLENTY OF PRACTICAL EXPERIENCE WITH HOW AND WHEN OUR CLIENTS CHOOSE TO TRADE THROUGH PUBLISHED PRICES. IN OUR EXPERIENCE, THE ONLY MARKET CENTERS OUR CLIENTS REGULARLY CHOOSE TO TRADE THROUGH OR AROUND ARE THE AMERICAN STOCK EXCHANGE AND CERTAIN ECNs. OUR CLIENTS TRADE AROUND AMEX BECAUSE AMEX IS SLOW TO RESPOND AND ITS QUOTATIONS OFTEN ARE NOT FIRM. SOME OF OUR CLIENTS TRADE AROUND ONE OR TWO SMALLER ECNs THAT CHARGE EXORBITANT ACCESS FEES.

BEFORE THE ADVENT OF SUPERMONTAGE, IT WAS COMMON PRACTICE FOR OUR CLIENTS TO SWEEP BEYOND THE NBBO AND TO PREFERENCE ECNs FOR THEIR IMMEDIACY. AT THE TIME, NASDAQ DISPLAYED MARKET-MAKER QUOTATIONS THAT WERE NOT AUTOMATICALLY EXECUTABLE. OFTEN, THE MARKET MAKERS TOOK BETWEEN 20 AND 40 SECONDS TO EXECUTE A TRADE. IN SOME CASES, THE RESULT WAS AN OUTRIGHT “DECLINE” BY THE MARKET MAKER. EVEN THEN, IT WAS RARE FOR OUR CLIENTS TO COMPLETELY IGNORE OR TRADE THROUGH MARKET-MAKER QUOTATIONS. RATHER, THE MARKET MAKERS TENDED TO GET A PROPORTIONATELY SMALLER AMOUNT OF ORDER FLOW AGAINST THEIR QUOTATIONS. THAT OCCURRED BECAUSE, COMPARED WITH ECNs, THEY WERE LESS RELIABLE, THAT IS, THEIR QUOTATIONS WERE LESS FIRM. ALSO, THEY DID NOT EXECUTE IMMEDIATELY AND THEY TOOK LONGER TO REFRESH THEIR QUOTATIONS. IN CONTRAST, ECN QUOTATIONS WERE FIRM, THEY EXECUTED AUTOMATICALLY AND REFRESHED IMMEDIATELY. WITH THE SUBSEQUENT LAUNCH OF SUPERMONTAGE AND THE PROLIFERATION OF FAST MARKETS, IT HAS BECOME RARER STILL THAT OUR CLIENTS IGNORE OR TRADE THROUGH A FAST MARKET IN NASDAQ STOCKS.

THE TECHNOLOGY IS IN PLACE. THE ORDER-MANAGEMENT SYSTEMS, ORDER-ROUTING TECHNOLOGIES, CONNECTIVITY AND SERVICE BUREAUS THAT BROKERS TODAY WIDELY EMPLOY LET THEM REACH EVERY LIQUIDITY VENUE. THESE SYSTEMS ARE DESIGNED TO SEEK BEST EXECUTION AT THE LOWEST COST BOTH FOR PROPRIETARY AND CLIENT ORDER FLOW.

THESE SYSTEMS LET TRADERS PREFERENCE OR PRIORITIZE ORDERS ON THE BASIS OF COST, RESPONSE TIME AND OTHER RELEVANT LIQUIDITY PARAMETERS. IN OUR EXPERIENCE, FIRMS DO NOT ROUTINELY TRADE THROUGH FAST MARKETS. ONLY SLOW MARKETS ROUTINELY TRADE THROUGH FAST MARKETS — AND THAT IS NOT BECAUSE THEY CANNOT ACCESS FAST MARKETS. IT IS BECAUSE THEY CHOOSE NOT TO.

IF TRADE-THROUGH PROTECTION FOR FAST MARKETS IS NOT NECESSARY AS A GENERAL MATTER, THEN A DE-MINIMIS TRADE-THROUGH RULE, THAT IS, A TRADE-THROUGH RULE THAT ALLOWS A FAST MARKET TO TRADE THROUGH A SLOW ONE BY JUST A LITTLE BIT, IS JUST PLAIN WASTEFUL. IN A MARKET WHERE PARTICIPANTS ALREADY HAVE ALL THE INCENTIVE THEY NEED TO ROUTE TO THE BEST FAST-MARKET PRICE, THE PROGRAMMING REQUIRED BY EACH PARTICIPANT TO ENSURE THAT EVERYONE DOES WHAT THEY ALREADY INTEND TO DO AMOUNTS TO EXPENSIVE REGULATORY AND SYSTEMS OVERKILL WITH NO COMMENSURATE BENEFIT TO INVESTORS.

A TRADE-THROUGH RULE, IN ADDITION TO BEING WASTEFUL, MAY ALSO BE HARMFUL TO INVESTORS. CONSIDER FIRST THAT SLOW MARKETS WILL FREELY CHOOSE TO BE SLOW MARKETS. THERE WILL BE LITTLE INCENTIVE FOR A MARKET TO ELECT TO BECOME A FAST MARKET IF SLOW MARKETS ARE TO RECEIVE TRADE-THROUGH PROTECTION— EVEN DE MINIMIS PROTECTION. SUCH SLOW MARKETS MAY HAVE GENUINE BENEFITS FOR PARTICIPANTS IN TERMS OF PRICE FORMATION AND LIQUIDITY. BUT THESE BENEFITS OUGHT TO ACCRUE ONLY AS THE RESULT OF COMPETITION. THAT

WOULD MEAN THAT THE SLOW MARKET PARTICIPANTS THEMSELVES WOULD HAVE TO BEAR THE ATTENDANT COST, FOR EXAMPLE IN THE FORM OF MISSED TRADING OPPORTUNITIES. THE ALTERNATIVE WOULD BE TO PERPETUATE TRADE-THROUGH RULES THAT WOULD ALMOST CERTAINLY IMPOSE A MUCH HIGHER COST THAT WILL CONTINUE TO BE BORNE BY THE ENTIRE INVESTOR UNIVERSE OF FAST MARKET PARTICIPANTS.

TO BE SURE, ONLY SLOW MARKETS THAT OFFER REAL BENEFITS WILL BE WORTH THE SACRIFICE OF FAST-MARKET TRADING OPPORTUNITIES. IN OPEN COMPETITION, THE BENEFITS WILL HAVE TO OUTWEIGH THE COSTS. THE BEST AND FAIREST WAY TO FACILITATE THAT RESULT IS TO PROMOTE ENHANCED INVESTOR CHOICE AND HAVE THE INVESTORS THEMSELVES BEAR THE COSTS OF THEIR OWN CHOICES.

THE TRADE-THROUGH RULE THE COMMISSION HAS PROPOSED IS COMPLEX AND WOULD BE EXPENSIVE TO IMPLEMENT. THE BETTER SOLUTION WOULD BE TO ABOLISH THE TRADE-THROUGH RULE ALTOGETHER. IF THE TRADE-THROUGH RULE WERE ABOLISHED FOR STOCKS LISTED ON THE NEW YORK STOCK EXCHANGE, WE EXPECT OUR CLIENTS WOULD TEND TO FAVOR THE FAST-MARKET VENUES, BUT WOULD NOT IGNORE SLOW MARKETS TO THE EXTENT THEY AFFORDED AVAILABLE LIQUIDITY. FAST MARKETS WOULD AUTOMATICALLY EXECUTE AGAINST THEIR QUOTATIONS AND REFRESH IMMEDIATELY AND THEREBY EARN MORE ORDER FLOW OVER TIME. ORDERS RESIDING ON THE SLOW MARKETS BEYOND THE TOP-OF-FILE AS WELL AS UPSTAIRS AND HIDDEN ORDERS IN THE CROWD WOULD BE TRADED THROUGH,

AND RIGHTLY SO. THE RESULTS WOULD BE GREATER TRANSPARENCY, GREATER EFFICIENCY, GREATER LIQUIDITY AND LESS INTERMEDIATION IN THE NATIONAL MARKET SYSTEM, WHICH ARE PRECISELY THE GOALS OF THE SECURITIES ACTS AMENDMENTS OF 1975.

AS A RESULT, WE BELIEVE THE BEST OUTCOME FOR THE MARKETS WOULD BE FOR THE COMMISSION TO ENTIRELY ELIMINATE THE TRADE-THROUGH RULE. IF THERE IS TO BE A TRADE-THROUGH RULE, HOWEVER, IT IS ESSENTIAL THAT THEIR BE OPT OUTS. WE THINK THE ORDER-ENTRY FIRM'S FIDUCIARY DUTY TO SEEK BEST EXECUTION WILL APPROPRIATELY LIMIT THE USE OF THE OPT OUT.

IN CLOSING, WE ONCE AGAIN COMMEND AND CONGRATULATE THE COMMISSION ON THE INITIATIVE IT HAS TAKEN. BUT WE ALSO MUST CALL THE COMMISSION'S ATTENTION TO THE COSTS OF ITS PROPOSAL. WE ARE ASTONISHED AT THE COMMISSION'S APPARENT TOLERANCE OF THE PROJECTED REGULATORY AND SYSTEMS' IMPLEMENTATION COSTS OF THE TRADE-THROUGH PROPOSAL, WHICH THE COMMISSION ESTIMATED AT HUNDREDS OF MILLIONS OF DOLLARS. WE DO NOT BELIEVE THE COSTS ARE JUSTIFIED BY THE PERCEIVED TRADE-THROUGH RISKS TO INVESTORS.

* * *

I APPRECIATE THE CHANCE TO OFFER BLOOMBERG TRADEBOOK'S VIEWS TO THE COMMISSION ON THESE IMPORTANT ISSUES. I WOULD BE

PLEASED TO ANSWER ANY QUESTIONS THE COMMISSION OR ITS STAFF MAY
HAVE.

#