Opening Statement by David Colker
CEO and President of The National Stock Exchange
Before the Securities and Exchange Commission
On Proposed Regulation NMS
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Chairman Donaldson, Commissioners Atkins, Campos, Glassman, and Goldschmid:

Thank you for the opportunity to participate in today's panel discussion.

My main objectives today are to challenge the assumption that the current system for market data revenue distribution needs to be changed and to caution the Commission against making a change that could prove to be far worse than any problem that exists today.

It is important to place the issue before us in historical context. The current market data revenue distribution method has been in place for over 25 years. For most of that time, the method has been perceived to be fair, easy to administer, and effective. It was first questioned two years ago by Nasdaq for competitive reasons because the National Stock Exchange had captured significant order flow in Nasdaq-listed securities as a result of NSX's cost initiatives. In response to the brokerage community's long-stated need for lower market data costs, NSX combined the operating leverage of its efficient all-electronic model with a commitment to run the Exchange as a utility. This strategic combination enabled NSX to lower market data costs by generating and sharing net revenue with its members, just like a true mutual company. Because other market centers that trade Nasdaq-listed issues were forced by NSX's competitive initiative to share 50% of their market data revenue, NSX's success in breaking Nasdaq's monopoly has been saving investors $65 million a year. If, as Regulation NMS suggests, the SEC is not going to address the explicit cost of market data by lowering the overall size of the market data revenue pool, then it is important that the SEC preserve a competitive environment among SROs in order to continue to indirectly bring down the cost of market data for the brokerage community and the public investor.

The premise that a trade-based formula creates economic distortions, regulatory distortions, or inappropriate incentives to engage in fraudulent behavior has not been sufficiently proven to warrant the proposed change to market data revenue distribution. Even if one believes that fraudulent actions are encouraged by the current distribution model, such actions represent rule violations that are already being regulated by effective SRO enforcement programs. The potential for such malfeasance no more justifies the adoption of the proposed costly solution than the potential for speeding justifies shutting down the highway system.

The proposed formula amendment is unnecessarily complex, misguided in its price discovery value judgment, and expensive to administer. Respected industry vendors such as MSI are having difficulty figuring out the complex workings of the formula. In addition, the position that trades less than $5000 have no price discovery value defies logic. For example, the new formula includes a 100-share trade of a $53 stock like JNJ but excludes a 1200-share trade of a $4 stock like SUNW, even if the SUNW trade creates a new high or low of the day. The fact is that all trades have price discovery value. Finally, in a world that is generating eighteen million NBBO quote changes daily across eight market centers, imagine the annual cost of determining how many thousands of quote credits each particular quote is due for each of the 23,400 seconds in every trading day. While NSX respects the desire of the Commission to encourage quote competition, the benefits of doing so through the proposed formula amendment simply do not come close to outweighing the new formula’s administrative costs.

Whatever action the SEC ultimately takes, it is important to combine such action with changes that require NBBO and trade report market data to become real-time. This means that the Consolidated Quote Plan’s sixty-second quote update provision and the Consolidated Tape Plan’s ninety-second trade reporting provision must be significantly reduced. Given the electronic nature of the trading world today, real-time market information – which is the stated purpose of the CQ and CT Plans – means automatic execution, automatic quote updating, and automatic trade reporting. Therefore, no quotes or trades should be given credit for market data revenue unless they emanate from a “fast” automated market.