Securities and Exchange Commission
Hearings on Proposed Regulation NMS

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Statement of Thomas Peterffy
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Comments on the Proposed Trade Through Rules:

Mr. Chairman, Members of the Commission and Commission Staff:

I am Thomas Peterffy, Chairman of the Interactive Brokers Group. We are a global, electronic broker dealer. We provide direct access brokerage services to institutions and sophisticated customers world wide. Through our Timber Hill affiliates, we are one of the largest traders of listed options, other derivatives and stocks on various exchanges and ECNs. We enthusiastically support the Commission's proposed trade through rule and ask for its rapid implementation, with a few modifications.

First, we would like to suggest that the exception to the trade through rule that would allow automated markets to trade through open outcry exchanges focus not on whether an exchange is automated but whether a particular quote disseminated by that exchange is automated. Each quote would be followed by a unique character indicating whether or not a matching order sent to access that quote would be automatically executed. Automatically executable quotes – both at the top of the book and down the book -- would get the protection of the trade through rule but manual quotes would not. This is simple and technically easy to implement.

We think that an objective standard is necessary in determining whether a quote is automated – meaning truly electronically accessible -- or manual. Most automated markets today provide an execution within one-tenth of a second of receiving an internally marketable order. Accordingly, we would suggest that an automated quote is one in which an order sent to that quote is executed, declined, booked, or routed on to a better market within one quarter of a second at least 98% of the time. This is easily within the bounds of today's readily available technology.

Focusing on whether particular quotes disseminated by a market center are electronically executable would allow hybrid market centers, like the New York Stock Exchange, to get the benefit of the trade through rule for those quotes that deserve it, and would provide these market centers with the flexibility to evolve towards

automation as they see fit. In addition, this approach would also deal with the question of whether quotes away from the NBBO should be protected and how block trades should be executed.

Accordingly, the rule should allow automated markets to trade through manual quotes by any amount, rather than limiting the exemption to one to five cents. Limiting the trade through amount would merely create an incentive for open outcry markets to adjust their quotes even more slowly -- to quote off the market by more than the trade through amount -- so as to continue to force orders to be routed to them and thus preserve their free option to trade or not to trade with incoming orders.

Conversely, we see no justification for anyone not to get the best automatically executable prices that are so indicated, and we do not believe that the Commission should allow customers to opt out of trade through protection and trade through automatically executable quotes.

Lastly, we think that the Commission should not require brokers to report to their customers the amount by which they traded through manual quotes. Such reports would merely create the false impression that these prices were actually attainable by the customer---when this is most often not the case.

To summarize, our five points for today's discussions are as follows:

1. Indicate if a quote – not a market -- is automatically executable.
2. An automatic quote is one in which an incoming order sent to that quote will be executed, declined, booked or routed to a better market within one quarter of a second.
3. Do not limit trade through amounts on manual quotes.
4. Do not allow opting out from trading with automatically-executable quotes.
5. Do not require disclosure of trade through amounts when a manual quote is traded through.

In closing, I would like to ask the Commission to act quickly. Even though these changes to the current rules could be implemented in a matter of weeks, those who prefer the status quo will drag their feet as usual. Rapid enactment of the new trade through rule, with the suggested changes, is our best hope for a fairer, more automated market.

<u>Comments on the Proposed Market Access Rules:</u>

We strongly support the Commission's proposal regarding open access to markets and we also strongly support the limitation on access fees that is included in the proposed rules.

Rather than adopt an access plan that relies on a central linkage bureaucracy like ITS or the Options Linkage Authority, the Commission's proposed rules wisely mandate simple and basic standards for open access, and then allow member broker-dealers and technology firms to provide private links that will connect the multiple market centers.

There is no technological impediment to the Commission adopting its access plan quickly. Best execution order routing software has been commercially available for years. Likewise, many software vendors offer order routing and management services at reasonable fees. A number of broker dealers also make smart order routing services available to customers, including other broker dealers, on a readily available basis.

While the proposed trade through rule in combination with the open access rules will be very effective, I would suggest three small changes.

First, in addition to the trade through rule that applies to market centers, the Commission should make clear that a broker dealer's duty of best execution includes the obligation not to trade through any electronically tradable prices.

Second, when a market center receives a marketable order against an automatically available quote that such market center cannot execute -- because of the trade through rule or otherwise -- that market center should be required to reject the order within one quarter of a second, or if it offers re-routing service, to re-route to the NBBO market within one quarter of a second.

Third, regarding locked markets: we do not see the problem and we do not believe that the access rules should prevent the posting of locking quotes. We want tight markets, and a locked market is as tight as it can get -- namely, as wide as the rebates. Market centers that have programmed their systems to stop functioning when the market is locked should be asked to change their systems.