

REGULATION NMS PUBLIC HEARINGS APRIL 21, 2004

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SUMMARY OF REMARKS BY BERNARD L. MADOFF

We applaud the SEC's proposal to address this complex set of issues. One of the great difficulties we face in addressing these issues is that so many of them are inextricably linked. In order to support a trade-through rule that would truly benefit investors, it is critical to implement a system that is characterized by seamless linkages and a fee structure that does not interfere with price discovery

Madoff Securities has held a long-standing position that the integrity of the quote is instrumental to the efficient functioning of a national market system ("NMS"). Investors must be assured that regardless of where their orders are routed, they will be in a position to reap the benefits of the NMS. It is our belief that the foundation of this system should be that publicly displayed quotes are firm and accessible. The best way to insure this result would be to require all "quoting" market centers to employ an automated order execution facility" for "inter-market" orders. Furthermore, effective linkages, both public and private, must be in place and the price displayed must truly reflect the actual cost of trading.

In the absence of a mandatory automated order execution facility for all "quoting market centers", it is critical to the success of any "trade-through" proposal that those markets unwilling to implement such a mechanism be designated as a "non-automated" order execution facility, subject to an unfettered "opt-out". The proposed requirements for such an "opt-out" of "non-automated order execution facilities should only be governed by the fiduciary requirements of "best execution".

There should be no "opt-out" available where a quote resides in a market that offers an "automated execution facility".