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March 26, 2004

Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549-0609

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Subject: Request to Testify
File No. S7-10-04

Dear Mr. Katz:

This letter supplements my March 19, 2004, letter, in which I requested to testify at the April 21, 2004, public hearing on Regulation NMS. Attached are three (3) copies of a summary of my intended testimony should I be chosen to testify at that hearing.

Thank you for your consideration.

Sincerely,

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SUMMARY OF NSX INTENDED TESTIMONY

AT THE APRIL 21, 2004, HEARING ON REGULATION NMS

Market Data Proposal

-- The proposed allocation formula is unnecessary complex, expensive to administer, and subject to gaming.

-- By disqualifying trades that do not have dollar volume of $5000 or higher, the allocation formula excludes too many trades from the revenue distribution calculation. For example, a 100-share trade of a $50 stock like Johnson & Johnson would have price discovery value under the formula but a 1200-share trade of a $3.95 stock like Lucent would have no value, even if the Lucent trade created a new high or low of the day.

-- Regulation NMS does not propose to reduce the overall size of the consolidated networks' distributable net income, which was the primary impetus for reevaluating the current method of generating and distributing market data.

-- The need to include quotes in the revenue calculation would be less necessary if the Commission ultimately adopts its proposed "hard" trade-through rule because such a rule would reward with trade activity those quotes that improve the national best bid or offer.

-- Given all of the above, the benefits of the proposed allocation formula do not outweigh the costs. Perhaps a more useful approach would be to adopt the current model for Nasdaq-listed securities, which averages a market center's trade and share contribution to the consolidated tape.

Trade-Through Proposal

-- The SEC has properly recognized the difficulties that manual markets create for brokers attempting to satisfy their best execution obligation.

-- NSX agrees "the consolidated stream of best quotes and trades is the single most important tool for unifying the many different market centers that simultaneously trade NMS stocks into something that truly can be called a national market system." In that regard, the new trade-through rule will only be effective if the SEC also makes changes to the tape so that it is actually "real time" and thus a reliable indicator of current market activity. Specifically, the 90-second quote update and 60-second trade report standards in the CQ and CT Plans need to be significantly reduced.

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Trade-Through Proposal (continued)

-- It is important to eliminate the following discrepancies that currently exist in the Nasdaq marketplace: (1) the ability to trade-through on an intra-market basis; (2) the ability to lock or cross on an intra-market basis; and (3) the ability of non-ITS CAES market makers to exempt themselves from the inter-market ITS trade-through rule.

-- The "op-out" provision is a reasonable exception now that the minimum trading variation is a one cent and the marketplace is so efficient. The definition of best execution has evolved from a simple standard of best price to a variable set of customer needs and expectations, and it is important that the Commission not prevent ongoing enhancements to the efficiency of the market by distorting the competitive environment. The "op-out" standard should not be so burdensome that it negates the ability of broker-dealers to use it and still trade efficiently.

-- The "de minimus" exemption for exchange-traded funds has worked well and should be preserved.