



NASDAQ Comments on the SEC's Recently Re-proposed Regulation NMS

New York, NY, —The Nasdaq Stock Market, Inc. (NASDAQ®; OTCBB: NDAQ) today submitted a comment letter on the Securities and Exchange Commission's (SEC) recently amended Regulation NMS proposal.

While NASDAQ strongly supports the goals of Regulation NMS: investor protection, enhanced competition, and transparency, NASDAQ cautioned the SEC with proceeding unless it is highly confident the rulemaking will achieve these goals. The letter states: "NASDAQ's primary concerns with Regulation NMS, as currently proposed, reflect our belief that market forces and best execution can be relied on to a greater degree to serve public purposes and the securities markets."

Trade Through

NASDAQ reiterated its position that applying the trade-through rule to NASDAQ-listed securities is not supported by the facts. The SEC relied on several of its own studies to support the application of the trade-through rule to NASDAQ-listed securities. NASDAQ respectfully disagreed with the studies and has responded to them in detail.

In addition to not applying the trade-through rule to NASDAQ-listed securities, NASDAQ also encouraged the SEC to eliminate the trade-through rule for the trading of New York Stock Exchange (NYSE) and other exchange-listed securities, thereby creating real competition for these markets.

In proposing to retain a modified trade-through rule for exchange-listed securities and expanding it to include NASDAQ-listed securities, Nasdaq believes the SEC will transform its role from acting when necessary to ensure the protection of investors to controlling nearly all aspects of trading.

Market Data

NASDAQ supports the SEC's pro-competitive liberalization of the rules governing distribution, consolidation and display of core and non-core market data by Self Regulatory Organizations (SRO) and other market participants. However, Nasdaq believes the SEC has failed to extend that pro-competitive principle to the government-mandated market data plans, which stifle competition and raise the cost of market data for all investors.

Quote Share Formula

According to NASDAQ's comment letter, "If the Commission adopts the proposed Quote Share formulation, SROs will become motivated to add quoting behavior to their member revenue sharing programs, and market participants will begin engaging in artificial behavior in both trading and quoting rather than just in trading. Whereas the trade-based formulae led to "print shops" in which no quotes were entered, a quote-based formula will lead to "quote shops" where no trades are executed. Under the proposed Allocation Formula, a quote shop could be profitable without ever executing a customer trade or setting a new inside."

The Commission's Quote Share proposal would lead to increased quotation activity as market participants chase valuable quotation credits in SRO member revenue sharing programs. For example, the Commission can expect innovative competitors to do some of the following:

- **Flickering Quotes:** displaying quotations just long enough to earn quotation credits but not long enough to risk execution;
- **Security Targeting:** generating quotations in securities where each quotation credit is proportionately more valuable;
- **Market Targeting:** generating quotations on markets with little or no resident liquidity to minimize the risk of order interaction;
- **Shredding Quotes:** generating multiple quotations in a single market, single quotations in multiple markets, or multiple quotations in multiple markets to slow the pace of executions and thereby prolong the period in which quotation credits are earned; and
- **Shifting Quotes:** moving quotations from one market to another to lengthen the chase by potential contra parties and thereby earn additional quotation credits.

The Commission did not analyze or discuss the impact of the Voluntary Depth of Book trade through proposal on the Allocation Amendment, the Display Amendment, or any other aspect of the market data proposal. Before adopting the

Depth of Book proposal, NASDAQ would expect the Commission to explain in detail how exclusive Securities Information Processors (SIP) would process and disseminate such data; who would bear the incremental cost of processing and disseminating Depth data and how fees would be set; what would be the display requirements for Depth data; how would national market system plans be amended to accommodate Depth data, among many, many other questions.

Assuming the Commission does not adopt the Depth of Book proposal, with certain clarifications, NASDAQ enthusiastically supports the Commission's proposals to permit SROs and other market participants to distribute their core and non-core data outside the confines of a national market system plan. This liberalization will facilitate the development of both core and non-core data products and ultimately reduce the cost of data to investors.

NASDAQ® is the largest electronic screen-based equity securities market in the United States. With approximately 3,300 companies, it lists more companies and, on average, trades more shares per day than any other U.S. market. It is home to companies that are leaders across all areas of business including technology, retail, communications, financial services, transportation, media and biotechnology. NASDAQ is the primary market for trading NASDAQ-listed stocks. For more information about NASDAQ, visit the NASDAQ Web site at www.nasdaq.com or the NASDAQ Newsroom at www.nasdaq.com/newsroom/.

Media Contacts:
Bethany Sherman
212.401.8714