TESTIMONY OF KIM BANG,

PRESIDENT AND CHIEF EXECUTIVE OFFICER

BLOOMBERG TRADEBOOK LLC,

BEFORE THE SUBCOMMITTEE ON CAPITAL MARKETS, INSURANCE, & GOVERNMENT SPONSORED ENTERPRISES OF THE COMMITTEE ON FINANCIAL SERVICES

U.S. HOUSE OF REPRESENTATIVES

REGARDING

"SELF-REGULATORY ORGANIZATIONS: EXPLORING THE NEED FOR REFORM"

NOVEMBER 17, 2005

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, MY NAME IS KIM BANG, AND I AM PLEASED TO TESTIFY ON BEHALF OF BLOOMBERG TRADEBOOK REGARDING "SELF-REGULATORY ORGANIZATIONS: EXPLORING THE NEED FOR REFORM."

BLOOMBERG TRADEBOOK IS OWNED BY BLOOMBERG L.P. AND IS LOCATED IN NEW YORK CITY. BLOOMBERG L.P. PROVIDES MULTIMEDIA, ANALYTICAL AND NEWS SERVICES TO MORE THAN 250,000 FINANCIAL PROFESSIONALS IN 100 COUNTRIES WORLDWIDE. BLOOMBERG TRACKS MORE THAN 135,000 EQUITY SECURITIES IN 85 COUNTRIES, MORE THAN 50,000 COMPANIES TRADING ON 82 EXCHANGES AND MORE THAN 406,000 CORPORATE BONDS. BLOOMBERG NEWS IS SYNDICATED IN OVER 350 NEWSPAPERS, AND ON 550 RADIO AND

TELEVISION STATIONS WORLDWIDE. BLOOMBERG PUBLISHES MAGAZINES AND BOOKS ON FINANCIAL SUBJECTS FOR THE INVESTMENT PROFESSIONAL AND NON-PROFESSIONAL READER.

BLOOMBERG TRADEBOOK IS A GLOBAL ELECTRONIC AGENCY BROKER SERVING INSTITUTIONS AND BROKER-DEALERS. WE COUNT AMONG OUR CLIENTS MANY OF THE NATION'S LARGEST INSTITUTIONAL INVESTORS REPRESENTING — THROUGH PENSION FUNDS, MUTUAL FUNDS AND OTHER VEHICLES — THE SAVINGS OF MILLIONS OF ORDINARY AMERICANS.

THIS IS A FORTUITOUS TIME TO HOLD THIS HEARING. THERE ARE MANY PIECES TO THE MARKET STRUCTURE PUZZLE — REG SRO, REG NMS, THE NYSE'S OPEN BOOK PROPOSAL, THE NYSE'S HYBRID MARKET PROPOSAL AND THE PROPOSED MERGERS. EACH HAS THE POTENTIAL TO HAVE AN ENORMOUS IMPACT ON INVESTORS AND THE ENTIRE CAPITAL-FORMATION PROCESS. HAVING ALL THESE PIECES ADD UP TO AN OPTIMAL MARKET STRUCTURE WILL BE AN ENORMOUS CHALLENGE FOR THE MARKETS AND FOR POLICY MAKERS.

I. SRO REFORM AND THE IMPLICATIONS OF A FOR-PROFIT NYSE

THE NYSE ENJOYS ENORMOUS MARKET SHARE IN ORDER FLOW AND COMPLETE CONTROL OF THE FUNDAMENTAL RAW MATERIAL OF TRADING, MARKET DATA. THAT MARKET SHARE AND CONTROL ARE

LARGELY THE RESULT OF GOVERNMENTALLY CONFERRED PRIVILEGES, NOT THE RESULT OF COMPETITIVE EXCELLENCE.

NOW, INVESTORS ARE BEING CONFRONTED WITH A PLAN TO TURN THE NYSE INTO A FOR-PROFIT ENTITY THROUGH A MERGER WITH ONE OF ITS ONLY COMPETITORS FOR ORDER FLOW, THE ARCHIPELAGO EXCHANGE. THIS CURRENT ROUND OF PROPOSED MERGERS TAKES PLACE ON TOP OF AN ALREADY SIGNIFICANT ROUND OF CONSOLIDATIONS, INCLUDING NASDAQ'S PURCHASE OF BRUT. ARE THESE DEVELOPMENTS GOOD OR BAD FOR INVESTORS AND THE MARKETS? THAT DEPENDS ON THE STEPS TAKEN BY POLICY MAKERS HERE ON THE HILL, AT THE SEC, AND ELSEWHERE.

PERHAPS THE MOST SIGNIFICANT CONSEQUENCE OF THE PROPOSED NYSE/ARCHIPELAGO MERGER IS THE FACT THAT THE NYSE WILL NOW BECOME A FOR-PROFIT ENTITY. AS A REGULATOR, A MARKETPLACE, AND THE BENEFICIARY OF A GOVERNMENT-SPONSORED INFORMATION MONOPOLY, THE NYSE IS PLAYING A LOT OF ROLES, MANY OF THEM CONFLICTING. AS A REGULATOR AND A MARKETPLACE, THE NYSE HAS A STATUTORY DUTY UNDER THE EXCHANGE ACT TO SERVE THE PUBLIC INTEREST AND TO PROTECT INVESTORS AGAINST FRAUD, MANIPULATION, DEFALCATIONS BY ITS MEMBERS AND DEPARTURES FROM JUST AND EQUITABLE PRINCIPLES OF TRADE. AS A FOR-PROFIT ENTITY, HOWEVER, THE NYSE WILL HAVE A FIDUCIARY OBLIGATION TO

EXTRACT MAXIMUM BENEFIT FOR ITS OWN SHAREHOLDERS. THAT MAY SUGGEST COST CUTTING, EVEN IN VITAL AREAS OF REGULATION AND PUBLIC PROTECTION. WHAT ARE THE REAL-WORLD IMPLICATIONS OF AN ENTITY THAT ENJOYS MONOPOLY POWERS SUDDENLY BEING CHARGED WITH MAXIMIZING BENEFIT FOR SHAREHOLDERS? WILL SUCH AN ENTITY EXPLOIT ITS REGULATORY POWERS TO AID ITS FOR-PROFIT ARM TO THE DISADVANTAGE OF INVESTORS? THE POLICY RAMIFICATIONS ARE SUBSTANTIAL AND THE NEED FOR VIGILANCE — ON THE HILL AND AT THE SEC — WILL BE AS WELL.

II. THE OTC MARKET AS A MODEL FOR A COMPETITIVE MARKET

IN THE RECENT SCANDALS INVOLVING THE NYSE SPECIALISTS, THE SEC TOOK A SIGNIFICANT STEP FORWARD FOR INVESTOR PROTECTION — ALL SEVEN SPECIALIST FIRMS WERE FOUND TO HAVE DAMAGED INVESTORS BY TRADING AHEAD OF THEIR ORDERS AND ENGAGING IN OTHER ILLEGAL CONDUCT AS A ROUTINE COURSE OF BUSINESS. THE SPECIALISTS WERE FINED A QUARTER OF A BILLION DOLLARS AND THEY FACE ADDITIONAL REGULATORY SANCTIONS. THE NYSE ITSELF WAS CENSURED FOR FAILURE TO ENFORCE THE LAW — WHICH IS REMINISCENT OF THE SANCTIONS IMPOSED ON THE NASD IN 1996. THAT FAILURE UNDERSCORED THE WEAKNESS OF THE NYSE'S SELF-REGULATORY SYSTEM AND DEMONSTRATED THE NEED FOR SUBSTANTIAL REFORM. AS WAS THE CASE IN THE NASDAQ MARKET, THE

PROBLEM IN THE NYSE WAS WITH THE SYSTEM, NOT THE PEOPLE. IF WE GET THE STRUCTURE RIGHT, THERE WILL SIMPLY BE LESS OPPORTUNITY FOR ABUSE.

THE NASDAQ MARKET SINCE 1996 PRESENTS A DIFFERENT PICTURE — IT IS A MARKET INTO WHICH REGULATION INTRODUCED AND ENCOURAGED REAL COMPETITION, A MARKET THAT QUITE OBVIOUSLY HAS NOW GROWN BEYOND THE NASDAQ PRICE-FIXING SCANDAL OF THE MID-1990S. THAT SCANDAL, OF COURSE, RESULTED IN THE SEC'S 1996 ISSUANCE OF THE ORDER-HANDLING RULES. THE SEC'S RULES ENHANCED TRANSPARENCY AND COMPETITION IN THE NASDAQ MARKET AND PERMITTED ELECTRONIC COMMUNICATIONS NETWORKS — ECNS — TO LEVEL THE PLAYING FIELD BETWEEN INVESTORS AND INTERMEDIARIES BY GRANTING INVESTORS DIRECT MARKET ACCESS TO THE NATIONAL MARKET SYSTEM.

INDEED, THE INCREASED TRANSPARENCY PROMOTED BY THE SEC'S ORDER-HANDLING RULES AND THE SUBSEQUENT INTEGRATION OF ECNS INTO THE NATIONAL QUOTATION MONTAGE NARROWED NASDAQ SPREADS BY NEARLY 30% IN THE FIRST YEAR FOLLOWING ADOPTION OF THE ORDER-HANDLING RULES. THESE, AND SUBSEQUENT REDUCTIONS IN TRANSACTIONAL COSTS, CONSTITUTE SIGNIFICANT SAVINGS TO INVESTORS, SAVINGS THAT FREE UP MONEY FOR FURTHER INVESTMENT, FUELING BUSINESS EXPANSION AND JOB CREATION.

FOR THE LAST DECADE, THE NASDAQ MARKET HAS BEEN CHARACTERIZED BY FIERCE COMPETITION AND EXTRAORDINARY INNOVATION. ELECTRONIC INNOVATIONS INCORPORATED INTO THE BLOOMBERG TRADEBOOK SYSTEM INCLUDE SMART ROUTING; RESERVE; DISCRETION; TRIGGER PEGGING; BUY-SIDE ALGORITHMIC TRADING; IMMEDIATE-OR-CANCEL ORDERS; SINGLE-LEVEL VS “EFFECTIVE SPREAD” TRADING CALLED (CALLED “BANG STYLE”); AND ANONYMITY.

THE PRESSURE OF THE COMPETITION OF A DOZEN ECNS HELPED PROD THIS INNOVATION. IS CONTINUED INNOVATION POSSIBLE IN A MORE CONCENTRATED MARKET? THE ANSWER IS "YES" -- IF POLICYMAKERS REMAIN VIGILANT REGARDING POTENTIALLY ANTI-COMPETITIVE ACTIONS BY THE SROS.

III. REG SRO

IN NOVEMBER OF 2004, THE COMMISSION INVITED RESPONSES TO ITS PROPOSALS ON A WIDE RANGE OF ISSUES WITH RESPECT TO THE SELF-REGULATORY SYSTEM. I WILL FOCUS PRINCIPALLY ON THE GENERAL ISSUE OF FUNDING SELF-REGULATION, THE METHODS BY WHICH MARKET DATA FEES ARE DETERMINED — WHICH IS OF PRIME IMPORTANCE TO US AS A DATA VENDOR AND TO OUR CLIENTS — AND THE BASIS ON WHICH THE COMMISSION SHOULD DETERMINE WHETHER AFFILIATES OF SELF-REGULATORY ORGANIZATIONS (“SROS”) WILL OR

WILL NOT BE SUBJECT TO THE REGULATORY REQUIREMENTS IMPOSED ON THE SROS THEMSELVES.

THE ULTIMATE OBJECTIVE OF OUR SYSTEM OF REGULATION OF THE SECURITIES INDUSTRY SHOULD BE A BALANCE BETWEEN FEDERAL AND INDUSTRY REGULATION BASED UPON THE CONVICTION THAT FAIR AND ORDERLY MARKETS AND THE PROTECTION OF INVESTORS ARE THE BEST GUARANTORS OF CONFIDENCE IN THE SECURITIES MARKETS. WE SUPPORT THE ROLE OF SELF-REGULATION IN ACHIEVING THAT GOAL.

WE AGREE WITH THE COMMISSION THAT THERE ARE CONFLICTS OF INTEREST INHERENT IN SELF-REGULATORY ORGANIZATIONS ("SROS") THAT REQUIRE VIGILANCE, PERIODIC REVIEW AND ADJUSTMENT. ON THE WHOLE, HOWEVER, WE THINK THE SROS HAVE DEMONSTRATED THEIR CAPACITY – WHEN PRODDED BY THE SEC AND THE HILL — TO MAKE NECESSARY CHANGES.

THE SYSTEM CAN BE IMPROVED. WE DO NOT BELIEVE IT SHOULD BE REPLACED. ONE IMPROVEMENT WOULD BE TO SEPARATE THE FOR-PROFIT ARM FROM THE REGULATORY FUNCTIONS. ANOTHER WOULD BE TO ENHANCE TRANSPARENCY.

THE COMMISSION ITSELF NOTES IN THE MARKET DATA CONCEPT RELEASE, GREATER TRANSPARENCY IS ESSENTIAL TO THE INTEGRITY AND FURTHER EVOLUTION OF THE SYSTEM. WE AGREE.

GREATER TRANSPARENCY CONCERNING THE REVENUES AND EXPENSES OF SROS IS ESSENTIAL. IN THIS RESPECT, WE FULLY SUPPORT THE COMMISSION'S PROPOSAL IN THE SRO GOVERNANCE AND TRANSPARENCY PROPOSAL[1] TO REQUIRE EACH SRO TO PROVIDE THE COMMISSION WITH ANNUAL AND QUARTERLY REGULATORY REPORTS REGARDING KEY ASPECTS OF THE SRO'S REGULATORY PROGRAM, INCLUDING GREATER DISCLOSURE REGARDING REVENUES AND EXPENSES AND STAFFING OF ITS REGULATORY PROGRAM. THE VERY ABSENCE OF INFORMATION FROM THE SROS CONCERNING EXPENSES AND THE ALLOCATION OF REVENUES MAKES IT DIFFICULT TO REACH DETAILED CONCLUSIONS ABOUT MANY OF THE ISSUES THE COMMISSION HAS RAISED IN THE CONCEPT RELEASE AND HOW BEST TO ADDRESS THEM. UNTIL WE KNOW MORE ABOUT HOW THE SROS GENERATE REVENUES AND HOW THEY SPEND IT, IT IS DIFFICULT TO REACH ANY DEFINITIVE JUDGMENTS ABOUT HOW MUCH MONEY THEY SHOULD RECEIVE AND HOW THEY SHOULD SPEND IT. NONETHELESS, SOME JUDGMENT CAN BE REACHED ON THE BASIS OF WHAT IS KNOWN.

THE COMMISSION WAS NOTABLY ON THE RIGHT TRACK IN PROPOSING LIMITATIONS ON THE VOTING POWER ANY SINGLE PERSON COULD AMASS IN THE NYSE OR OTHER SROS. THAT STEP SHOULD

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[1] Securities Exchange Act Release No. 50699 (November 18, 2004).

USEFULLY PREVENT ANYONE FROM TAKING A DOMINANT OR CONTROLLING INTEREST IN ANY OF OUR MAJOR MARKET CENTERS.

IV. MARKET DATA REVENUES — THE COST OF INFORMATION

MARKET DATA IS THE "OXYGEN" OF THE FINANCIAL MARKETS. ENSURING THAT MARKET DATA IS AVAILABLE IN A FASHION WHERE IT IS BOTH AFFORDABLE TO RETAIL INVESTORS AND WHERE MARKET PARTICIPANTS HAVE THE WIDEST POSSIBLE LATITUDE TO ADD VALUE TO THAT DATA MUST BE CRITICAL PRIORITIES.

BEFORE THE 1970S, NO STATUTE OR SEC RULE REQUIRED SROS TO DISSEMINATE MARKET INFORMATION TO THE PUBLIC OR TO CONSOLIDATE QUOTES OR LAST-SALE DATA WITH INFORMATION FROM OTHER MARKET CENTERS. INDEED, THE NYSE, WHICH OPERATED THE LARGEST STOCK MARKET, CLAIMED AN OWNERSHIP INTEREST IN MARKET DATA, SEVERELY RESTRICTING ACCESS TO MARKET INFORMATION. MARKETS AND INVESTORS SUFFERED FROM THIS LACK OF TRANSPARENCY. ALSO, INTER-MARKET COMPETITION WAS STIFLED.

AT THE URGING OF THE SEC, CONGRESS RESPONDED BY ENACTING THE SECURITIES ACTS AMENDMENTS OF 1975. THESE AMENDMENTS EMPOWERED THE SEC TO FACILITATE THE CREATION OF A NATIONAL MARKET SYSTEM FOR SECURITIES, WITH MARKET PARTICIPANTS REQUIRED TO PROVIDE — IMMEDIATELY AND WITHOUT

COMPENSATION — INFORMATION FOR EACH SECURITY THAT WOULD THEN BE CONSOLIDATED INTO A SINGLE STREAM OF INFORMATION.

AT THE TIME, CONGRESS CLEARLY RECOGNIZED THE DANGERS OF DATA-PROCESSING MONOPOLIES. THE REPORT ACCOMPANYING THE 1975 AMENDMENTS EXPRESSLY WARNS THAT:

> "PROVISION MUST BE MADE TO INSURE THAT THIS CENTRAL PROCESSOR IS NOT UNDER THE CONTROL OR DOMINION OF ANY PARTICULAR MARKET CENTER. ANY EXCLUSIVE PROCESSOR IS, IN EFFECT, A PUBLIC UTILITY, AND THUS IT MUST FUNCTION IN A MANNER WHICH IS ABSOLUTELY NEUTRAL WITH RESPECT TO ALL MARKET CENTERS, ALL MARKET MAKERS, AND ALL PRIVATE FIRMS." Report of the Senate Comm. on Banking, Housing, and Urban Affairs To Accompany S.249, S. Rep. No. 94-75, 94th Cong., 1st Sess. 11 (1975).

TODAY, UNDER THE NEW WORLD OF REG NMS, THE VERY SAME CONCERNS APPLY TO EXCLUSIVE SECURITIES INFORMATION PROCESSORS, SUCH AS THE NYSE, THAT COLLECT AND DISTRIBUTE INFORMATION ON AN EXCLUSIVE BASIS. THE COMMISSION SHOULD NOT BE ANY LESS VIGILANT IN POLICING THE CONDUCT OF SUCH EXCLUSIVE PROCESSORS TO GUARD AGAINST THE ABUSES THE CONGRESS SO APTLY WARNED AGAINST.

EVEN AS NOT-FOR-PROFIT ENTITIES, SROS HISTORICALLY HAVE EXPLOITED THE OPPORTUNITY TO SUBSIDIZE OTHER COSTS (E.G., EXECUTIVE COMPENSATION, COST OF MARKET OPERATION, MARKET REGULATION, MARKET SURVEILLANCE, MEMBER REGULATION) THROUGH THEIR GOVERNMENT-SPONSORED MONOPOLY ON MARKET INFORMATION FEES. WHILE THIS SUBSIDY IS TROUBLING ENOUGH, THE INCENTIVE TO EXPLOIT THIS MONOPOLY POSITION WILL BE EVEN STRONGER AS SROS ENTER THE FOR-PROFIT WORLD AND CONTEMPLATE NEW LINES OF BUSINESS.

BEFORE THE NYSE/ARCA AND NASDAQ/INET MERGERS WERE ANNOUNCED, THE SEC LAUNCHED A PUBLIC DISCUSSION OF MARKET DATA REVENUES AND WHETHER THEY SHOULD BE COST-BASED. BLOOMBERG STRONGLY SUPPORTS COST-BASED LIMITS ON MARKET INFORMATION FEES AND BELIEVES THE IMPENDING FOR-PROFIT STATUS OF THE NYSE LENDS GREATER URGENCY TO THIS INITIATIVE.

IN ITS 1999 CONCEPT RELEASE ON MARKET DATA, THE COMMISSION NOTED THAT MARKET DATA SHOULD BE FOR THE BENEFIT OF THE INVESTING PUBLIC. INDEED, MARKET DATA ORIGINATES WITH SPECIALISTS, MARKET MAKERS, BROKER-DEALERS AND INVESTORS. THE EXCHANGES AND THE NASDAQ MARKETPLACE ARE NOT THE SOURCES OF MARKET DATA, BUT RATHER THE FACILITIES THROUGH WHICH MARKET DATA ARE COLLECTED — PURSUANT TO REGULATORY FIAT AND

WITHOUT COMPENSATION TO INVESTORS OR THEIR BROKERS — AND DISSEMINATED. IN ITS 1999 RELEASE, THE SEC PROPOSED A COST-BASED LIMIT TO MARKET DATA REVENUES.

THAT COST-BASED APPROACH WOULD NOT REQUIRE THE NYSE AND NASDAQ TO SELL THE DATA AT COST. INSTEAD, IT WOULD REQUIRE THE CHARGES TO BE REASONABLY RELATED TO THE COST OF COLLECTING AND DISSEMINATING THE DATA, WITH A PERMITTED PROFIT THAT, LIKE OTHER PUBLIC-UTILITY RATES, REFLECTS THE PROTECTED MONOPOLIES THE NYSE AND NASDAQ ENJOY. TODAY, *AS NOT-FOR-PROFIT ENTITIES* THE SRO NETWORKS SPEND ABOUT $40 MILLION ON COLLECTION AND DISSEMINATION AND RECEIVE OVER TEN TIMES THAT MUCH — $424 MILLION — IN REVENUES.[2] YET, A DETAILED ACCOUNTING OF THESE REVENUES, INCLUDING THE UNDERLYING COSTS TO THE SROS OF PRODUCING THE DATA, AND AN ACCOUNT OF THE USE OF THESE REVENUES HAS BEEN UNAVAILABLE.

THE PROPOSED MERGERS WILL, OF COURSE, SUBSTANTIALLY INCREASE THE AMOUNT OF MONEY THAT INVESTORS WILL BE PAYING FOR MARKET DATA. HISTORICALLY, ISLAND, INSTINET, BRUT AND

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[2] *See*, Regulation NMS, Securities Exchange Act Release No. 50870 (December 16, 2004) in text accompanying n. 286:

> In 2003, the Networks collected $424 million in revenues derived from market data fees and, after deduction of Network expenses, distribute $386 million to their individual SRO participants. [footnote omitted].

ARCHIPELAGO HAVE MADE ALL MARKET DATA — NOT JUST THE NATIONAL BEST BID AND OFFER BUT THEIR ENTIRE BOOK — AVAILABLE FOR FREE. ALL OF THESE VENUES — AS INDEPENDENT ENTITIES COMPETING WITH NASDAQ AND THE NYSE — FOUND THAT MAKING THIS DATA AVAILABLE FOR FREE GENERATED SO MUCH PUBLIC TRADING THAT DOING SO WAS AN ECONOMIC WINNER. AS THESE COMPETITORS DISAPPEAR UNDER THE PROPOSED MERGERS, THE FREE DEPTH OF BOOK WILL ALSO DISAPPEAR. COUPLED WITH THE CHANGED INCENTIVES OF FOR-PROFIT EXCHANGES, THE PUBLIC MAY WELL BE LOOKING AT PAYING A BILLION DOLLARS IN ANNUAL MARKET DATA FEES.

THOSE REVENUES COME FROM INVESTORS. IF INVESTORS ARE PAYING ROUGHLY TEN TIMES THE COST OF CONSOLIDATION WHEN DEALING WITH NOT-FOR-PROFIT ENTITIES WHERE SIGNIFICANT COMPETING VENUES ARE POTENTIALLY RESTRAINING COSTS, WHAT WILL INVESTORS BE PAYING WHEN THOSE COMPETITORS CEASE TO EXIST AND THE NYSE AND NASDAQ ARE FOR-PROFIT ENTITIES CHARGED WITH MAXIMIZING SHAREHOLDER INTEREST?

UNDER "BEST EXECUTION" OBLIGATIONS, MOREOVER, EACH BROKER-DEALER IS REQUIRED BY LAW TO ASCERTAIN WHAT TRADING VENUE HAS THE BEST PRICE IN EVERY STOCK, EVERY MILLISECOND. AS HAVING COMPLETE ACCESS TO THIS DATA IS EFFECTIVELY REQUIRED BY

LAW, BROKER-DEALERS HAVE ABSOLUTELY NO CAPACITY TO BARGAIN OVER THE PRICE OF THIS DATA.

WE URGE THE SEC TO MOVE EXPEDITIOUSLY TO ADDRESS THE MARKET DATA ISSUE AS PART OF REG SRO, AND WE EMBRACE THE CALL BY THE SECURITIES INDUSTRY ASSOCIATION (SIA) FOR A COST-BASED APPROACH TO MARKET DATA FEES. INDEED, IT'S POWERFUL TESTIMONY WHEN AN ORGANIZATION LIKE THE SIA NOT ONLY OPPOSES THE EXPENDITURE OF MARKET DATA FEES FOR REGULATION BUT ALSO FAVORS THE IMPOSITION OF SEPARATELY CHARGED AND TRANSPARENTLY ACCOUNTED-FOR REGULATORY FEES, TO COVER THE REGULATORY COSTS.[3] IT SPEAKS VOLUMES ABOUT THE FEARS THAT INFORMED MARKET PARTICIPANTS HAVE ABOUT THE CURRENT MARKET DATA FEE STRUCTURE THAT THEY WOULD PREFER TO HAVE A SEPARATE FEE LEVIED ON THEM THAN TO CONTINUE WITH THE STATUS QUO.

THE SROS COLLECTIVELY ENJOY A GOVERNMENT-SPONSORED MONOPOLY THAT PROTECTS THEM FROM COMPETITION — AND FROM RISK. MARKET DATA FEES ARE NOT SET IN AN OPEN OR COMPETITIVE PROCESS. NEITHER THE ROLE OF THE NETWORKS IN NEGOTIATING FEES NOR THE NOTICE-AND-COMMENT PERIOD THE COMMISSION PROVIDES ON FEE FILINGS ARE AN EFFECTIVE SUBSTITUTE

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[3] SIA letter to SEC (June 30, 2004) in SEC File No. S7-10-04, at page 23.

FOR THE PRICE-FORMATION MECHANISM OF COMPETITIVE MARKETS OR FOR MORE VIGOROUS GOVERNMENTAL OVERSIGHT. WE NOTE THAT THE COMMISSION REMAINS CONCERNED ABOUT WHAT IT HAS CHARACTERIZED AS A "COST-OF-SERVICE RATEMAKING APPROACH" TO MARKET DATA FEES, BUT THE CURRENT SYSTEM DOES NOT ADEQUATELY PROTECT INVESTORS FROM OVERCHARGES.

THE EXISTENCE OF REBATING OF MARKET DATA FEES TO ATTRACT AND KEEP ORDER FLOW AND TAPE SHREDDING IS EVIDENCE ENOUGH THAT FEES ARE MUCH TOO HIGH. INDEED, IT'S QUITE POSSIBLE THAT THE DRAMATICALLY SHRINKING SIZE OF THE AVERAGE TRANSACTION IS A REFLECTION OF CHURNING TO GENERATE MARKET DATA REVENUES.

EVERY INVESTOR WHO BUYS AND SELLS STOCKS HAS A LEGITIMATE CLAIM TO THE OWNERSHIP OF THE DATA AND LIQUIDITY HE OR SHE PROVIDES TO MARKET CENTERS. FUNNELING EXCLUSIVE LIQUIDITY INFORMATION TO EXCHANGE MEMBERS AND FUNNELING MARKET DATA REVENUES TO EXCHANGES AND NASDAQ AND NOT TO PUBLIC INVESTORS SHIFTS THE REWARDS FROM THOSE WHO TRADE — THAT IS TO SAY, THE INVESTORS — TO THOSE WHO FACILITATE TRADING. THE BENEFITS OUGHT TO BE CONFERRED UPON THE PUBLIC.

WHILE THE COMMISSION DOES NOT HAVE THE ROLE OF A RATE SETTER, IT DOES HAVE A STATUTORY RESPONSIBILITY TO

VIGOROUSLY OVERSEE THE SROS AND TO BE CERTAIN THAT THE FEES THEY SET ARE FAIR, REASONABLE AND NON-DISCRIMINATORY. IN FACT, GREATER TRANSPARENCY AS TO THE EXCHANGES' COSTS AND MARK-UPS OVER THEIR COSTS WOULD ALLOW THE MARKET TO PROD THE COMMISSION INTO INSISTING ON RATES THAT ARE FAIR WITHOUT THE NEED FOR EXCESSIVE GOVERNMENT INTERVENTION.

V. MARKET DATA — ACCESS TO INFORMATION

AS POLICY MAKERS CONTEMPLATE REFORMING SROS, IT IS CRITICAL THAT THE FINAL STRUCTURE ENCOURAGE TRANSPARENCY AND ACCESS TO INFORMATION. THE ADVENT OF DECIMALIZATION HAS CREATED NEW CHALLENGES IN THIS REGARD.

DECIMALIZATION HAS BEEN A BOON TO INVESTORS, DRAMATICALLY REDUCING SPREADS, AND A SPUR TO MARKET EFFICIENCY. HOWEVER, THE RULES GOVERNING THE DISPLAY OF MARKET DATA — RULES CRAFTED IN AN ERA OF EIGHTHS AND SIXTEENTHS — HAVE NEVER BEEN UPDATED TO REFLECT DECIMALIZATION.

SINCE DECIMALIZATION INTRODUCED 100 PRICE POINTS TO THE DOLLAR IN PLACE OF THE PREVIOUS EIGHT OR SIXTEEN, THE AMOUNT OF LIQUIDITY AVAILABLE AT THE NATIONAL BEST BID AND OFFER IS MUCH SMALLER THAN BEFORE. AS A RESULT, THERE HAS BEEN

A DRAMATIC DIMINUTION IN TRANSPARENCY AND LIQUIDITY AT THE INSIDE QUOTATIONS.

THE SIA, IN COMMENTING ON REG NMS, ACCURATELY OBSERVED: “THE VALUE OF THE NBBO — THE CORNERSTONE OF THE MARKET DATA SYSTEM — IS LESS THAN IT WAS PRIOR TO DECIMALIZATION. WE BELIEVE THAT THE SEC HAS A RESPONSIBILITY TO ADDRESS THIS ISSUE IN LIGHT OF THE OPERATION OF ITS QUOTE AND DISPLAY RULES” [RULES 602 AND 603 UNDER EXCHANGE ACT REG NMS]. SIA, Comment letter on Regulation NMS (February 1, 2005) at p. 24, in SEC File No. S7-10-04.

THUS, BLOOMBERG L.P. WAS ENCOURAGED WHEN, LATE IN 2002, THE NYSE FILED WITH THE SEC A PROPOSED RULE CHANGE THAT WOULD PERMIT THE DISPLAY AND USE OF QUOTATIONS IN STOCKS TRADED ON THE NYSE TO SHOW ADDITIONAL DEPTH IN THE MARKET FOR THOSE STOCKS.

THE GOOD NEWS — THE NYSE’S “LIQUIDITY QUOTE” AND "OPENBOOK" PROPOSALS HOLD THE PROMISE OF ULTIMATELY RESULTING IN THE DISPLAY OF ADDITIONAL DEPTH. THE BAD NEWS — THE NYSE PROPOSED TO EXPLOIT ITS STATUS AS A GOVERNMENT-SPONSORED MONOPOLY TO REQUIRE SOME VENDORS TO SIGN CONTRACTS THAT WOULD HAVE PLACED SEVERE RESTRICTIONS ON THE USE OF THIS DATA. THOSE RESTRICTIONS WOULD HAVE REQUIRED

VENDORS TO ADVANTAGE THE NYSE OVER COMPETING MARKET CENTERS WHEN IT CAME TO THE DISPLAY OF DECIMALIZED DATA WHILE ALSO PRECLUDING BLOOMBERG FROM ADDING VALUE TO THIS DATA IN A WAY THAT BENEFITS INVESTORS AND THE MARKETS. THE NYSE'S ORIGINAL PROPOSAL WOULD HAVE PROHIBITED DATA VENDORS FROM INTEGRATING NYSE LIQUIDITY QUOTE DATA WITH DATA FROM OTHER MARKET CENTERS.

IN SHORT, THE PROMISE OF ENHANCED TRANSPARENCY AT THE HEART OF DECIMALIZATION WOULD HAVE BEEN THWARTED. INSTEAD, THE NYSE PROPOSED TO LEVERAGE ITS GOVERNMENT-SPONSORED MONOPOLY OVER MARKET DATA DOWNSTREAM TO UNFAIRLY DISADVANTAGE NOT ONLY COMPETITORS IN THE INFORMATION MARKET, BUT ALSO COMPETITORS IN THE TRADING MARKET. ALONG WITH OTHER MARKETS, TRADING VENUES AND MARKET DATA VENDORS, MIDDLE MARKET AND SMALLER INVESTORS WHO CAN'T AFFORD TO MAINTAIN THEIR OWN COMPUTER FACILITIES WOULD HAVE BEEN PARTICULARLY DISADVANTAGED.

AFTER EXTENSIVE REVIEW AND ANALYSIS, THE SEC ON APRIL 2, 2003 UNANIMOUSLY STRUCK DOWN THE NYSE'S RESTRICTIVE CONTRACTS. ON THE NYSE'S EFFORTS TO ESTABLISH BARRIERS THAT PREVENT VENDORS FROM INTEGRATING LIQUIDITY QUOTES WITH QUOTATIONS FROM OTHER MARKETS, THE COMMISSION HELD THESE

BARRIERS WOULD: "IMPOSE ON USERS INTEGRATION COSTS WITH RESPECT TO IMMEDIATELY EXECUTABLE, MARKET-WIDE QUOTATIONS IN A MANNER THAT WOULD: (1) BE INCONSISTENT WITH FOSTERING "COOPERATION AND COORDINATION WITH PERSONS ENGAGED IN PROCESSING INFORMATION WITH RESPECT TO SECURITIES"; (2) "BE DESIGNED TO PERMIT UNFAIR DISCRIMINATION BETWEEN CUSTOMERS"; AND (3) IMPEDE, RATHER THAN REMOVE IMPEDIMENTS TO, A "FREE AND OPEN MARKET AND A NATIONAL MARKET SYSTEM." Securities Exchange Act Release No. 47614 (April 2, 2003), SEC File No. SR-NYSE-2002-55.

ULTIMATELY, NUMEROUS MARKET PARTICIPANTS — INCLUDING THE U.S. CHAMBER OF COMMERCE, SIA, STA, AMERITRADE, THE PHILADELPHIA EXCHANGE AND OTHERS — ROSE IN OPPOSITION TO THE NYSE'S ANTI-COMPETITIVE CONTRACT AND IN FAVOR OF THE SEC'S ACTIONS.[4] THE NYSE HAS ATTEMPTED TO ENFORCE SIMILAR RESTRICTIONS ON COMPARABLE DATA IN THE PENDING OPEN BOOK CONTROVERSY.

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[4] The Commission appropriately blocked the NYSE's efforts to impose via contracts with market vendors improper limits on Liquidity Quote, which is substantially similar in operation to Open Book. These improper limits would have diminished the opportunity for competing market centers to offer comparable transparency. *Matter of Bloomberg*, Securities Exchange Act Release No. 49076 (January 14, 2004), avail. at: http://www.sec.gov/litigation/opinions/34-49076.htm. The NYSE has refiled its Liquidity Quote proposal with the Commission. There still are imperfections and shortcomings in Open Book. This issue continues to be under review at the Commission.

A FOR-PROFIT NYSE WILL HAVE AN EVEN GREATER INCENTIVE TO PUSH AGGRESSIVELY ON ISSUES LIKE LIQUIDITY QUOTE AND OPEN BOOK, WHERE THE NYSE'S IDEA OF COMPETITION WAS TO EXPLOIT ITS MONOPOLY TO BAN OTHERS FROM COMPETING. IF THERE IS CONSOLIDATION IN THE MARKET BECAUSE THE MARKET DEMANDS IT, THAT IS A GOOD THING. IF THERE IS CONSOLIDATION IN THE MARKET BECAUSE A GOVERNMENT-SPONSORED MONOPOLY IS ABLE TO LEVERAGE ITS MONOPOLY POSITION IN A MANNER THAT PRECLUDES INVESTORS FROM SEEING COMPETING MARKETS, THAT IS A BAD THING.

THE SEC IS TO BE COMMENDED FOR ITS EXTRAORDINARY COMMITMENT OF TIME AND EFFORT IN ANALYZING THIS ISSUE. THAT KIND OF OVERSIGHT WILL NEED TO BE THE MODEL IF WE ARE TO HAVE A REGULATORY SYSTEM THAT PROTECTS INVESTORS DESPITE INCREASINGLY CONCENTRATED AND CONFLICTED MARKETS.

I'D CONCLUDE MY DISCUSSION OF ACCESS TO INFORMATION BY NOTING THAT THE CURRENT PRICING PROPOSAL FOR REAL-TIME OPEN BOOK DATA – LIKE THE PREVIOUSLY PROPOSED PRICING ON LIQUIDITY QUOTE -- IS YET ANOTHER EXAMPLE OF THE ONGOING CONTROVERSY REGARDING SROs PROPOSING MARKET DATA FEES WITHOUT COST JUSTIFICATION. THE FEES THE NYSE PROPOSES TO CHARGE FOR ACCESS TO OPEN BOOK DATA ON A REAL-TIME BASIS ARE APPROXIMATELY EQUAL TO THE FEES THE NYSE CURRENTLY CHARGES FOR ACCESS TO ALL

OTHER NYSE MARKET DATA ON A REAL-TIME BASIS — ABOUT $50 A MONTH PER USER. THESE FEES WOULD EFFECTIVELY ***DOUBLE*** THE AVERAGE FEES INVESTORS PAY TODAY FOR NYSE REAL-TIME DATA IF THE INVESTORS SUBSCRIBE TO OPENBOOK. SINCE DECIMALIZATION HAS REDUCED THE VALUE OF THE EXISTING BBO DATA, THE INVESTORS WOULD EFFECTIVELY BE PAYING TWICE TO RECEIVE INFORMATION EQUIVALENT IN ECONOMIC VALUE TO WHAT THEY USED TO RECEIVE BEFORE DECIMALIZATION. THE NYSE SHOULD NOT BE ABLE TO EXTRACT THESE KINDS OF MONOPOLY RENTS FROM THE MARKETS AND INVESTORS WITHOUT JUSTIFICATION AND WITHOUT EVEN A CURSORY SHOWING OF THE COSTS INVOLVED IN PRODUCING THESE DATA.

VI. FUNDING MARKET REGULATION

EFFECTIVE SELF-REGULATION BY THE EXCHANGES COSTS MONEY. WHAT IS AT ISSUE IS HOW TO PAY FOR IT. SOME ARGUE THAT MARKET DATA FEES SHOULD BE USED TO CROSS-SUBSIDIZE SRO REGULATORY OPERATIONS. WE RESPECTFULLY SUBMIT THAT IT IS NEITHER NECESSARY NOR DESIRABLE THAT REGULATION BE PAID FOR WITH MARKET DATA FEES. THE ARGUMENT THAT DATA FEES SHOULD PAY FOR MARKET REGULATION BECAUSE MARKET REGULATION IS NECESSARY TO SAFEGUARD THE INTEGRITY OF THE TRADING AND THUS THE DATA IS UNPERSUASIVE AND INDEED ILLOGICAL. IT IS NO MORE TRUE THAN IT IS TRUE THAT OTHER ASPECTS OF SRO OPERATIONS ARE

ESSENTIAL TO THE CREATION OF DATA, SUCH AS EXECUTIVE COMPENSATION, OPERATING COSTS OF FLOOR FACILITIES AND GENERAL OVERHEAD OF VARIOUS KINDS WITHOUT WHICH AN SRO WOULD HAVE TO SHUT ITS DOORS. INDEED, THE COSTS OF MARKET SURVEILLANCE AND REGULATION, HOWEVER WORTHY AND NECESSARY TO AN SRO'S OPERATION, HAVE NO NECESSARY CONNECTION TO THE DATA THEMSELVES.

THE BEST WAY TO ENSURE TRANSPARENT ACCOUNTING FOR THE COSTS OF REGULATION IS THROUGH A SEPARATE AND DISTINCT ALLOCATION OF FUNDS TO PAY FOR REGULATION. THE SEC SHOULD APPLY RIGOROUS, COST-BASED ACCOUNTING IN ASSESSING THE REASONABLENESS OF MARKET DATA FEES. THE PUBLIC NEEDS A TRUE AND FAIR ASSESSMENT OF THE REASONABLENESS OF MARKET DATA FEES.

VII. EFFECTIVE REGULATION

THE ISSUE OF ADEQUATE FUNDING FOR SRO REGULATION GOES TO THE QUESTION OF PROVIDING ADEQUATE REGULATION. THE DISCUSSION OF ALTERNATIVES TO THE CURRENT STRUCTURE OF SROS CONSIDERS WHETHER ANY OF THE COMMISSION'S PROPOSED STRUCTURAL CHANGES WOULD INCREASE SRO REGULATORY INDEPENDENCE. WE DO NOT BELIEVE IT WOULD BE FEASIBLE OR DESIRABLE FOR THE SEC ITSELF TO BE SOLELY RESPONSIBLE FOR

MARKET AND MEMBER REGULATION. THE OTHER FOUR PROPOSALS ADVANCED BY THE COMMISSION IN THE SRO CONCEPT RELEASE ARE VARIATIONS ON TWO PROPOSALS: A HYBRID MODEL THAT WOULD SEPARATE MEMBER REGULATION FROM MARKET REGULATION AND A SINGLE REGULATOR, WHETHER AN INDUSTRY SELF-REGULATOR OR A NON-INDUSTRY REGULATOR MODELED ON THE PCAOB.

FORMING SEPARATE AND INDEPENDENT CORPORATE SUBSIDIARIES ON THE MODEL OF THE NASD CORPORATE STRUCTURE MERITS FURTHER CONSIDERATION, COUPLED WITH TRANSPARENCY AND DISCLOSURE. IF MARKET PARTICIPANTS ARE PROVIDED WITH GREATER TRANSPARENCY AND DISCLOSURE, THEY WILL BE EMPOWERED TO "WATCH THE WATCHERS" AND HELP ENSURE SUCCESSFUL SELF-REGULATION.

THERE ARE A COUPLE OF THINGS THAT CAN BE DONE EVEN BEFORE ADDRESSING THESE LARGER STRUCTURAL ISSUES. FIRST, EXISTING OPPORTUNITIES FOR REGULATORY ARBITRAGE BETWEEN AND AMONG REGULATORY SYSTEMS SHOULD BE REMOVED. THE MOST NOTORIOUS OF THESE IS THE EXEMPTION FROM SHORT-SALE REGULATION FOR TRADING NASDAQ SECURITIES ON THE REGIONAL EXCHANGES. SECOND, REGARDLESS OF ANY CHANGES TO THE STRUCTURE OF THE SELF-REGULATORY SYSTEM, WE BELIEVE THERE SHOULD BE A CONSOLIDATED INFORMATIONAL BASE THAT ALL REGULATORS SHOULD BE ABLE TO DRAW ON. HAVING SEPARATE AND

UNCOORDINATED REGULATORY DATA IS INEFFICIENT AND DETRACTS FROM THE QUALITY OF REGULATION. IT MAY BE, FOR EXAMPLE, THAT THE OATS SYSTEM AND THE NYSE'S ORDER-TRACKING SYSTEM WOULD PROVIDE A BASIS FOR CREATING A UNIFIED INDUSTRY UTILITY. THE COMMISSION ITSELF IS IN THE BEST POSITION TO MAKE THAT DETERMINATION. WHETHER ADDED TO THE PRESENT INFRASTRUCTURE OR USED FOR AN ENTIRELY NEW INFRASTRUCTURE, HOWEVER, WE BELIEVE UP-TO-DATE TECHNOLOGY SHOULD BE DEPLOYED TO MAKE REGULATION AND SURVEILLANCE BOTH EFFECTIVE AND COST-EFFICIENT. WE FULLY AGREE WITH THE SECURITIES INDUSTRY ASSOCIATION PROPOSAL FOR THE CREATION OF A NEUTRAL INDUSTRY UTILITY SUCH AS THE DEPOSITORY TRUST AND CLEARING CORPORATION TO MAINTAIN A CONSOLIDATED ORDER AUDIT TRAIL WITH THE COSTS OF DEVELOPMENT AND MAINTENANCE SHARED ACROSS THE INDUSTRY.

VIII. AFFILIATED ENTITIES

FINALLY, IN THE SRO GOVERNANCE AND TRANSPARENCY PROPOSAL, THE COMMISSION ASKS WHETHER ENTITIES AFFILIATED WITH AN SRO SHOULD BE SUBJECT TO THE SAME DEGREE OF REGULATION AS THE SROS THEMSELVES WITH RESPECT TO THEIR CHARTERS, BY-LAWS AND RULES. WE THINK THE COMMISSION TOOK THE CORRECT APPROACH TO THIS ISSUE IN ITS ORDER GRANTING NASDAQ TOOLS A CONDITIONAL EXEMPTION FROM VARIOUS FILING AND RULE-MAKING PROCEDURES.

ON MARCH 7, 2000, NASDAQ PURCHASED FINANCIAL SYSTEMWARE, INC., A MANUFACTURER OF SOFTWARE PRODUCTS, AND FORMED A WHOLLY OWNED SUBSIDIARY THAT HAS BEEN NAMED NASDAQ TOOLS, INC. ("NASDAQ TOOLS"). THROUGH A SERIES OF STEPS, THE COMMISSION GRANTED NASDAQ AN EXEMPTION (THE "FSI EXEMPTION") THAT ALLOWS NASDAQ TO AVOID TREATING FSI'S BUSINESS AS SUBJECT TO THE REGULATORY REQUIREMENTS, INCLUDING THE RULE-FILING REQUIREMENTS, APPLICABLE TO THE NASD AND NASDAQ THEMSELVES.[5]

IN GRANTING THE FSI EXEMPTION, THE COMMISSION RECOGNIZED THE DANGER OF NASDAQ'S LEVERAGING ITS TRADING MONOPOLY INTO A COMPETITIVE ADJACENT MARKET AND IMPOSED CONDITIONS TO PREVENT THAT LEVERAGING. IN PARTICULAR, THE COMMISSION CONDITIONED THE EXEMPTION ON THE PRESENCE OF EFFECTIVE COMPETITION IN THE PROVISION OF ORDER-MANAGEMENT SYSTEM SERVICES AND SOFTWARE TO MARKET MAKERS, AND REQUIRED THAT NASD ENCOURAGE THE DEVELOPMENT OF SOFTWARE BY NASD MEMBERS AND COMPETING SOFTWARE VENDORS. TO MAINTAIN THE OPPORTUNITY FOR WHAT IT CALLED FAIR COMPETITION, THE COMMISSION REQUIRED NASD AND NASDAQ TO CONTINUE TO PROVIDE

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[5] Securities Exchange Act Release No. 44201 (April 18, 2001).

OPEN-ARCHITECTURE SYSTEMS THAT ENABLE FULL PUBLIC ACCESS TO NASD'S FACILITIES.

THE COMMISSION ALSO REQUIRED THAT IT NOT BE NECESSARY, CURRENTLY OR IN THE FUTURE, TO USE THE SOFTWARE MARKETED BY FSI TO ACCESS NASDAQ OR ANY OTHER NASD MARKET-RELATED FACILITY AND THAT FULL AND FAIR PUBLIC ACCESS TO NASDAQ BE AVAILABLE. THUS, BROKERS AND DEALERS THAT WISH TO ACCESS NASDAQ ARE NOT TO BE FORCED TO PURCHASE OR USE FSI PRODUCTS OR SERVICES. NASD AND NASDAQ ALSO AGREED TO TREAT FSI IN THE SAME WAY AS ANY OTHER THIRD-PARTY VENDOR — AND NOT TO GIVE IT ANY SPECIAL ADVANTAGES REGARDING PLANNED OR ACTUAL CHANGES TO NASDAQ. SPECIFICALLY, FSI WOULD NOT BE GIVEN ANY ADVANCE OR PRIVATE KNOWLEDGE OF SUCH CHANGES. IN ADDITION, TO ENFORCE AND EMPHASIZE THE SEPARATION OF NASDAQ AND FSI, THE COMMISSION REQUIRED THAT THE TWO COMPANIES HAVE SEPARATE AND DISTINCT OFFICE SPACE AND PROHIBITED THEM FROM SHARING EMPLOYEES. THE COMMISSION ALSO SPECIFICALLY NOTED THAT NASD AND NASDAQ PROPOSED THAT NASDAQ WOULD OPERATE FSI AS A STAND-ALONE BUSINESS, CAPITALIZED SEPARATELY AND NOT SUBSIDIZED BY NASD MEMBERS OR OTHER REVENUES OF NASD OR NASDAQ.

WE BELIEVE THE FSI EXEMPTION PROVIDES BOTH A USEFUL MODEL AND PRECEDENT FOR THE STRUCTURAL SEPARATION OF AN SRO

AND AN AFFILIATE. IN EXCHANGE FOR FREEING SRO AFFILIATES FROM SRO-LIKE REGULATION, THE FSI EXEMPTION REQUIRES THAT AFFILIATED ENTITIES ARE EFFECTIVELY SEPARATE FROM THEIR SRO PARENTS AND ENSURES THAT SROS DO NOT LEVERAGE THEIR GOVERNMENT-CONFERRED MONOPOLIES TO SUBSIDIZE THEIR ENTRY INTO COMPETITIVE MARKETS.

IN 2002, BLOOMBERG L.P., IN CONSULTATION WITH TWO DISTINGUISHED ECONOMISTS — DR. GEORGE HAY, THE FORMER DIRECTOR OF ECONOMICS OF THE ECONOMIC POLICY OFFICE OF THE ANTITRUST DIVISION OF THE UNITED STATES DEPARTMENT OF JUSTICE AND DR. ERIK SIRRI, A FORMER CHIEF ECONOMIST OF THE SEC — SUBMITTED TO THE SEC A DISCUSSION PAPER ENTITLED "COMPETITION, TRANSPARENCY, AND EQUAL ACCESS TO FINANCIAL MARKET DATA". THE PAPER DELINEATED THE WAYS IN WHICH THE EXCHANGES, IN THE ABSENCE OF STRUCTURAL PROTECTIONS, MAY ABUSE THEIR MONOPOLY POWER OVER THE COLLECTION OF MARKET INFORMATION TO THE DETRIMENT OF CONSUMERS, COMPETITORS AND THE NATIONAL MARKET SYSTEM. THE PAPER PROPOSED STRUCTURAL CHANGES – MODELED ON THE FSI EXEMPTION -- TO ADDRESS THESE POSSIBLE ABUSES. THE CONCERNS EXPRESSED IN THE PAPER HAVE BEEN BORNE OUT BY BLOOMBERG L.P.'S THREE YEAR-LONG CONFLICT WITH THE NYSE OVER RESTRICTIONS THE NYSE HAD HOPED TO IMPOSE ON THE DISSEMINATION OF DECIMALIZED INFORMATION TO INVESTORS, DISCUSSED ABOVE. THIS

UNDERSCORES THE NEED FOR CONTINUED VIGILANCE BY POLICY MAKERS, ESPECIALLY AS WE ENVISION MARKETS CHARACTERIZED BY FOR-PROFIT EXCHANGES AND HIGH LEVELS OF CONCENTRATION.

IX. UPDATING THE VENDOR DISPLAY RULE FOR A DECIMALIZED WORLD

CONGRESS AND THE COMMISSION SHOULD GIVE STRONG CONSIDERATION TO UPDATING THE VENDOR DISPLAY RULE TO REFLECT THE REALITIES OF DECIMALIZED TRADING. THE VENDOR DISPLAY RULE WAS ADOPTED WHEN THERE WERE EIGHT PRICE POINTS TO THE DOLLAR AND IT REQUIRES CONSOLIDATED INFORMATION ONLY WITH RESPECT TO THE BEST BID AND OFFER. UNLESS THE VENDOR DISPLAY RULE IS UPDATED, INVESTORS RISK HAVING LESS USEFUL INFORMATION THAN EXISTED BEFORE DECIMALIZATION. SPECIFICALLY, WE WOULD URGE THE SEC TO CONSIDER:

- AMENDING THE LIMIT ORDER DISPLAY RULE, RULE 604 IN REG NMS, TO REQUIRE EXCHANGES, MARKET MAKERS AND OTHER MARKET CENTERS (INCLUDING ECNS) TO PUBLISH ANY CUSTOMER LIMIT ORDERS RECEIVED OR COMMUNICATED TO OTHERS WITHIN FIVE CENTS OF THEIR BEST PUBLISHED QUOTATIONS (THAT IS TO SAY, FIVE CENTS ABOVE THE BEST OFFER AND FIVE CENTS BELOW THE BEST BID).

- AMENDING THE VENDOR DISPLAY RULE, RULE 603 IN REG NMS, TO REQUIRE VENDORS, SUCH AS BLOOMBERG L.P., TO CARRY ON THE SAME TERMS AS TOP-OF-FILE QUOTATIONS ALL DEPTH-OF-BOOK QUOTATIONS PUBLISHED BY ANY MARKET CENTER, AS THAT TERM IS DEFINED IN REG NMS RULE 600, WITH THE POSSIBLE EXCEPTION OF MARKET CENTERS WHOSE SHARE OF VOLUME IS INSIGNIFICANT.

THIS IS A MODEST PROPOSAL. THE IMPACT OF THESE STEPS WOULD BE TO RESTORE THE TRANSPARENCY THAT HAS BEEN LOST AS AN UNINTENDED AND UNFORESEEN RESULT OF DECIMALIZATION. AS A POLICY MATTER IT IS HARD TO ARGUE THAT DECIMALIZATION SHOULD LEAVE THE PUBLIC WITH *LESS* TRANSPARENCY.

X. CONCLUSION

THIS IS A TIME OF ENORMOUS MARKET CHANGE. WILL THESE CHANGES PROVE TO BE IN THE PUBLIC INTEREST?

THAT ANSWER IS UP TO POLICYMAKERS HERE, AT THE SEC AND AT THE DEPARTMENT OF JUSTICE. THERE IS ENORMOUS POTENTIAL FOR ANTI-COMPETITIVE ABUSE, PARTICULARLY IN THE NYSE MARKET WHERE ONE ENTITY STANDS AS UMPIRE, REFEREE, AND HOME TEAM. THE CHANGE TO FOR-PROFIT STATUS — WHICH IS THE MAJOR CONSEQUENCE

OF THE PROPOSED MERGER WITH ARCHIPELAGO — RADICALLY ESCALATES THE POTENTIAL FOR ANTI-COMPETITIVE ACTIVITY.

THE SEC ROSE TO THAT CHALLENGE IN ADDRESSING THE NASDAQ SCANDALS OF THE MID-90S BY MANDATING TRANSPARENCY TO ADDRESS CONFLICTS. WE BELIEVE GREATER TRANSPARENCY, EQUAL AND FAIR ACCESS TO MARKET DATA FOR ALL MARKET PARTICIPANTS, AND REGULATION INDEPENDENT OF THE FOR-PROFIT ENTITY ARE – WHEN COUPLED WITH CONGRESSIONAL AND REGULATORY VIGILANCE -- THE INGREDIENTS FOR REFORMING SELF-REGULATORY ORGANIZATIONS.

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