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June 30, 2004

Jonathan G. Katz, Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

Re: Securities and Exchange Commission Release No. 34-49408;
File No. S7-10-04

Dear Mr. Katz:

Thank you for giving us the opportunity to comment on File No. S7-10-04, proposed Regulation NMS. We represent Euronext N.V., a holding company incorporated under Dutch law that operates through local subsidiaries ("Euronext"). Euronext was formed on September 22, 2000 when the exchanges of Amsterdam, Brussels and Paris merged. The Euronext group expanded at the beginning of 2002 with the acquisition of the London International Financial Futures and Options Exchange and the merger with the Portuguese exchange Bolsa de Valores de Lisboa e Porto.

Euronext commends the Commission and its staff for their efforts to address a number of regulatory issues critical to enhance and modernize the U.S. securities markets. Euronext supports these efforts and, in large part, supports the specific regulatory steps proposed in Regulation NMS. However, Euronext urges the Commission to go even further in its efforts to modernize the current market system by recognizing the globalization of today's capital markets and the importance of enabling U.S. investors to access non-U.S. markets in an efficient manner. In simple terms, Regulation NMS fails to go far enough, fast enough in providing U.S. investors with expanded trading opportunities and improving the "efficiency, competition, price transparency, best execution, and direct interaction of investor orders"¹ in non-U.S. securities. Our comments below address these concerns.

¹ See Proposed Rule: Regulation NMS, Exchange Act Release No. 49325 (February 26, 2004) at Section II.

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The Objectives of Regulation NMS

In addition to consolidating the existing national market system (“NMS”) rules adopted under Section 11A of the Securities Exchange Act of 1934, as amended (“Exchange Act”), into a single regulation, proposed Regulation NMS would incorporate four substantive proposals that are designed to enhance and modernize the regulatory structure of the U.S. equity markets. First, the Commission is proposing a uniform rule for all NMS market centers that, subject to certain exceptions, would require a market center to establish, maintain, and enforce policies and procedures reasonably designed to prevent “trade-throughs” -- the execution of an order in its market at a price that is inferior to a price displayed in another market. Second, the Commission is proposing a market access rule that would modernize the terms of access to quotations and execution of orders in the NMS. The third proposal would prohibit market participants from accepting, ranking, or displaying orders, quotes, or indications of interest in a pricing increment finer than a penny, except for securities with a share price of below \$1.00. Finally, the Commission is proposing amendments to the rules and joint industry plans for disseminating market information to the public that, among other things, would modify the formulas for allocating plan net income to reward markets for more broadly based contributions to public price discovery.

The Commission notes that “the proposals are designed to address a variety of problems that generally fall within three categories: (1) the need for uniform rules that promote equal regulation of, and free competition among, all types of market centers; (2) the need to update antiquated rules that no longer reflect current market conditions; and (3) the need to promote greater order interaction and displayed depth, particularly for the very large orders of institutional investors.”² Euronext commends the Commission for recognizing that free competition, modernization and improving order flow and trading capabilities for investors are critical to a healthy market system.

The Scope of Regulation NMS Should be Expanded

Euronext believes that increased liquidity and lower transaction costs are essential to the competitiveness of any market. Claims by the U.S. securities markets to be the most efficient in the world sound hollow when non-U.S. markets are excluded from full participation and competition with and in the U.S. markets. Competition is the driving force contributing to lower transaction costs and it fosters efficiency and innovation that directly benefits U.S. investors. Moreover, U.S. investors should be entitled to the greatest possible choice of securities from which to invest, consistent with investor protection and regulatory oversight. Expanding the participation of non-U.S. markets and increasing the number of securities that can be efficiently

² *Id.*

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bought and sold by U.S. investors should be a critical component of any Commission plan of modernization.

The objectives for Regulation NMS include efficiency, competition, price transparency, best execution, and direct interaction of investor orders. These goals should not be limited to securities listed or quoted on U.S. markets. Rather, the Commission should take this opportunity to also improve U.S. investors' access to non-U.S. markets, and the associated benefits and competition those markets can offer, by revisiting the non-U.S. market access issues previously raised in the Commission's 1997 concept release on exchange regulation.³ The 1997 release recognized U.S. investors' growing interest in cross-border trading opportunities and emphasized the Commission's desire to promote access to such trading opportunities, provided that the mechanisms affording access to non-U.S. markets remain subject to appropriate investor safeguards. At that time, the Commission requested comment on the appropriate degree of regulatory control over non-U.S. market activities, and how the desire to promote access to cross-border trading opportunities can be balanced against the preservation of adequate investor safeguards. A little less than a year later, in March 1998, the Commission stated that it was "currently considering the question of under what circumstances a non-U.S. market that provides the ability in the United States for a U.S. person to trade directly in the market must register as a U.S. exchange."⁴ More than six years have now passed and Euronext and other non-U.S. markets are still waiting for the Commission's answer. In the seven years that have passed since the Commission's 1997 release recognizing technological advances and the corresponding growth of cross-border trading opportunities, the Commission has made virtually no progress on expanding the opportunities of U.S. investors to invest in non-U.S. markets.

It has been suggested that when adopted, Regulation NMS will be "the most significant modernization of the National Market System since the original rules were adopted after the National Market System legislation in 1975."⁵ Euronext believes that a plan of modernization that leaves U.S. investors' access to non-U.S. markets languishing under the regulatory environment that existed in the last decade of the twentieth century is woefully inadequate. Now is the appropriate time for the Commission to move forward on the issues previously raised in the 1997 concept release. The scope of proposed Regulation NMS should be expanded to address U.S. investors' access to non-U.S. markets and the securities traded thereon. Indeed, the Commission should take this opportunity to publicly consider the scope and means of U.S. investors' access to non-U.S. markets concurrently with its consideration of the U.S. market

³ Regulation of Exchanges, Exchange Act Release No. 38672 (May 23, 1997).

⁴ Statement of the Commission Regarding Use of Internet Web Sites to Offer Securities Transactions or Advertise Investment Services Offshore, Exchange Act Release No. 39779 (March 23, 1998) at Section VII.

⁵ See Statement by SEC Chairman: Regulation NMS Proposal - Opening Statement at Open Meeting (February 24, 2004) (available at <http://www.sec.gov/news/speech/spch022404whd.htm>).

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structure issues, rather than deferring the question until after completing its review of U.S. market structure issues.⁶

Allowing Direct Access to Non-U.S. Markets Would Further the Goals of Regulation NMS and Would be Consistent with Public Policy

As noted in proposed Regulation NMS, when the Commission held hearings in 2002 to consider various market structure issues, the consensus was clear that “the Commission should further the interests of investors by promoting a market structure that encourages the robust interaction of buying and selling interest; that investors, both large and small, are best served by a system that ensures prices are established through fair and vigorous competition among competing market centers; and that investors need to be able to execute transactions in the best market efficiently.”⁷ Access to diverse markets, including non-U.S. markets, is key to “best execution” and ultimately to the benefit of all market participants. Furthermore, during periods of extreme market stress, the availability of alternative trading venues and platforms is vital to the health and functionality of the equity markets.

While the Commission has expressed concern that U.S. investors who access non-U.S. markets directly may be unwittingly forfeiting important investor safeguards (*e.g.*, they may not receive adequate information as to non-U.S. markets or non-U.S. issuers and their securities), it has itself acknowledged the benefits of cross-border trading opportunities and the use of advanced technologies to increase those opportunities, noting that “the optimal [regulatory] framework for [non-U.S. markets that provide direct access to U.S. investors] should not impose unnecessary obligations on non-U.S. markets that could effectively preclude U.S. investors from taking advantage of an otherwise efficient, cost-effective investment alternative.”⁸ In seeking to balance these considerations, the Commission has indicated that it is particularly concerned with the lack of comparable information about securities of non-reporting non-U.S. companies.⁹ It

⁶ Recent speeches by Commission officials have suggested that the Commission does not intend to further consider the question of access to non-U.S. markets until after the Commission has completed its examination of the U.S. market structure issues. *See, e.g.*, Statement before the House Financial Services Committee by Ethiopis Tafara, Director, Office of International Affairs, May 13, 2004 (available at <http://financialservices.house.gov/media/pdf/051304et.pdf>); Speech by SEC Commissioner Cynthia A. Glassman at the Annual Conference of International Bankers, March 1, 2004 (available at <http://www.sec.gov/news/speech/spch030104cag.htm>); Remarks by SEC Chairman William Donaldson on US-EU Regulatory Cooperation, on January 26, 2004 in Brussels (available at <http://www.useu.be/Categories/CorporateGovernance/Jan2604DonaldsonSpeechEPC.html>).

⁷ *See Proposed Rule: Regulation NMS*, Exchange Act Release No. 49325 (February 26, 2004) at Section IV.

⁸ *See Regulation of Exchanges*, Exchange Act Release No. 38672 (May 23, 1997). at Section VII.

⁹ Securities listed on U.S. exchanges are required to be registered pursuant to Section 12(b) of the Exchange Act, and the issuers of the securities are thereby subject to the U.S. public reporting requirements of Section 13 of the Exchange Act. In comparison, issuers of securities listed and traded exclusively on non-U.S. markets are not subject to the securities registration provisions of Section 12(b) of the Exchange Act but may still become subject to the registration provisions of Section 12(g) of the Exchange Act, to the

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should be noted, however, that investing in non-U.S. reporting companies is not a recent phenomenon. U.S. investors have been trading in such securities for years. Historically, U.S. investors seeking to purchase a security traded on a non-U.S. market would place an order with a U.S. registered broker-dealer who provided the investor with current information regarding the issuer. The U.S. broker-dealer would then transmit the order, via telephone or otherwise, to a non-U.S. broker-dealer member of the market on which the security traded. Technological advances now render it possible for U.S. firms to route orders directly to the non-U.S. market rather than routing the order through a non-U.S. broker-dealer. Due to the current regulatory climate, however, the benefits and efficiencies of those technological advances have not been realized by a good portion of the U.S. investing public. Non-U.S. broker-dealers are still, at this point unnecessarily, being interjected into the order routing process for little reason other than to protect the U.S. broker-dealer, and the non-U.S. market, from the prohibitions of Section 5 of the Exchange Act.¹⁰ As such, the current regulatory framework does not preclude U.S. investors from purchasing securities traded on non-U.S. markets; it merely renders it more risky, more difficult, more expensive, and less efficient.

While some global U.S. brokerage firms and their non-U.S. affiliates throughout the world have been able to develop internal order routing systems that create a form of “pass-through” access that functions much the same as if the U.S. broker-dealer were directly entering the orders on the various non-U.S. markets, other U.S. firms without a global infrastructure and comparable financial resources are not in a position to establish such systems and access the non-U.S. markets in that manner. Hence, such U.S. brokerage firms, and their U.S. investor customers, are largely precluded from enjoying the form of “pass-through” access that the Commission referred to in the 1997 concept release. Moreover, the fact that some U.S. firms have been able to achieve “pass-through” access to non-U.S. markets is not an indication that the current regulatory situation is acceptable or that U.S. investors’ needs are being adequately served. Any suggestion to this effect would be completely inconsistent with the goals the Commission has identified in Regulation NMS. If anything, the current situation is anticompetitive and inappropriately favors large global brokerage firms and their U.S. institutional investors over other smaller brokerage firms and investors because: (i) the large global firms are in a better position to create the artifice of “pass-through” access; and (ii) large institutional investors are better positioned to (a) by-pass U.S. broker-dealers and enter into direct relationships with non-U.S. broker-dealers that can effect the non-U.S. market transactions

extent there is any significant U.S. investment in such securities. Hence, there is an existing U.S. regulatory and disclosure framework directed at non-U.S. issuers whose securities are owned by U.S. persons but traded exclusively on non-U.S. markets. 15 U.S.C. § 78i; 17 C.F.R. § 240.12g3-2.

¹⁰ Section 5 of the Exchange Act renders it unlawful for any broker-dealer or exchange, directly or indirectly, “to make use of the mails or any means or instrumentality of interstate commerce for the purpose of using any facility of an exchange within or subject to the jurisdiction of the United States to effect any transaction in a security, or to report any such transaction, unless such exchange is registered as a national securities exchange under Section 6 [of the Exchange Act]” or is exempt from registration pursuant to the limited volume exemption. 15 U.S.C. § 78e.

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directly or (b) otherwise negotiate favorable relationships and commission rates with global U.S. firms capable of providing their customers with “pass-through” access. In short, the current situation is only demonstrative of the industry’s attempt to arrive at a “band-aid” fix to a problem that has existed for some time and that is increasingly in need of Commission action to bring the U.S. exchange registration provisions into the twenty-first century.

Recently, it has been suggested that non-U.S. markets wishing to provide direct access to U.S. brokerage firms and their customers should be registered and regulated in the United States as U.S. exchanges.¹¹ However, the significant duplicative costs of complying with an additional regulatory regime will chill non-U.S. markets’ willingness to provide direct access to U.S. persons and thereby deny U.S. investors the very opportunities that a more cost-efficient and modern offshore market can provide. The Commission seemed to recognize this reality in 1997, and yet still has done nothing to address these concerns.¹² To suggest that the only means by which U.S. brokerage firms and their customers can directly access securities traded exclusively on non-U.S. markets is by having those markets first submit to U.S. exchange registration and all of the attendant U.S. regulations is unrealistic and fails to recognize the reality of today’s global market place. Moreover, even if it were viable, from a legal and regulatory perspective, for all of the various non-U.S. markets throughout the world to submit to U.S. exchange registration and regulation, the ongoing costs of that process would be overwhelming, would ultimately be passed on to investors in the form of transaction costs, and would thereby diminish the savings and efficiencies that such non-U.S. market investments could otherwise offer to U.S. investors. It is hard to see how such a result is in the interest of U.S. investors. Surely the Commission would not intend such a result. Finally, as to the Commission’s concerns with respect to U.S. markets and non-U.S. markets being on a “level playing field,” it should be noted that the Euronext markets (i) are already subject to significant regulation and supervision not only by the individual regulators in the different countries in which Euronext markets are located, but also by a second layer of oversight by a separate body created by those regulators specifically to act on a coordinated basis to supervise all Euronext markets collectively; and (ii) are not seeking to compete with the U.S. markets by trading U.S. listed securities, but rather are seeking to provide

¹¹ See *Convergence and Beyond U.S. - Europe Symposium: Program on International Financial Systems* (November 15, 2003) (available at <http://www.sec.gov/news/speech/spch111503rcc.htm>).

¹² The 1997 concept release on exchange regulation identified three possible alternative approaches to regulating non-U.S. market activity in the United States: (1) application of traditional exchange regulation principles to non-U.S. markets seeking to enter the United States; (2) reliance on home-country regulation of non-U.S. markets, provided the non-U.S. regulatory schemes include certain requirements comparable to those of the United States; or (3) establishing regulatory requirements for entities providing direct access to non-U.S. markets, regardless of whether an entity is a non-U.S. market, broker-dealer, or other service provider. In discussing the three potential alternatives, the Commission seemed to recognize in 1997 that the first alternative was not viable on a practical level due to: (1) the difficulty in imposing a domestic regulatory regime on a non-U.S. market, particularly where non-U.S. regulations conflict with U.S. requirements; and (2) the fact that the expense associated with registering as a U.S. securities exchange may discourage non-U.S. markets from providing access to U.S. investors (thereby causing the U.S. investors to lose investment opportunities that might otherwise be available to them).

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U.S. investors with economically efficient access to an additional class of potential securities in which they may wish to invest.

In proposing Regulation NMS and pursuing the larger goals at which it is directed, the Commission should now rise to the occasion and finally strike the appropriate balance between protecting U.S. investors and furthering their ability to pursue cross-border trading opportunities. In Euronext's view, that balance necessarily requires that U.S. brokerage firms be given the capability to directly enter orders on non-U.S. markets without subjecting the non-U.S. market to U.S. exchange registration. As compared to the means by which U.S. investors historically acquired securities of non-U.S., non-reporting companies, allowing U.S. firms to directly enter orders for such securities merely eliminates the performance of unnecessary functions by a middleman – the non-U.S. broker-dealer member of the non-U.S. market – over which the Commission does not have jurisdiction in the first instance. In addition, enabling the U.S. broker-dealer to directly enter orders on the non-U.S. market would render the U.S. broker-dealer (a party over which the Commission clearly does have jurisdiction) more directly responsible for the trade and the attendant U.S. regulatory obligations. Such a situation could be expected to improve the protection of U.S. investors with regard to trade execution quality, lower transaction costs, and reduce settlement risks without diminishing any of the current protections associated with U.S. investors' purchases of such non-U.S. securities.

It would be desirable for many U.S. broker-dealers to provide U.S. investors with electronic (*i.e.*, screen-based) access to quotations from, and transaction execution with or through, affiliates or other broker-dealers outside the United States, particularly with respect to non-U.S. securities or outside of U.S. trading hours. Similarly, there may be many situations in which it would be desirable for U.S. market participants to view real-time quotation and transaction information from – and obtain automated execution on – non-U.S. exchanges that serve as the principal markets for particular securities. Direct, inter-connected electronic access to non-U.S. markets would provide individual and institutional investors with equal access to these non-U.S. markets and provide a more efficient manner to execute trades. The geographic distance of U.S.-based institutional customers from non-U.S. exchange markets creates a competitive cost disadvantage that electronic trading could erase. It is in the best interests of investors for the Commission to encourage the electronic automation of the securities order and execution process, reducing many of the risks investors otherwise face and decreasing costs through increased efficiency. In short, U.S. broker-dealers and their customers would benefit by not having to forward trades to a non-U.S. broker-dealer for entry into, and execution on, a non-U.S. market. If the Commission allows U.S. broker-dealers to have direct access to non-U.S. exchanges, U.S. investors will receive the benefits of improved speed, price and certainty of execution. This more efficient means of electronic access will also enable U.S. investors to more fully enjoy the advantages of portfolio diversification through non-U.S. exchange traded securities.

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In various other contexts, the Commission has shown a willingness to consider accommodations that promote U.S. investors' access to various non-U.S. investment opportunities while preserving investor safeguards.¹³ The Commission should show the same good judgment by allowing U.S. firms to directly route and enter orders on non-U.S. markets without requiring the non-U.S. market to submit to U.S. exchange registration.

Euronext is Uniquely Positioned to Provide U.S. Investors with the Benefits and Objectives at Which Regulation NMS is Directed

As of December 31, 2003, there were 1,392 securities listed on Euronext. The Euronext electronic trading platform is supported by the NSC system owned by AtosEuronext. The NSC system is a fully automated trading platform that allows members either to route their customers' orders electronically or to enter orders manually from computers installed on their premises which are linked to Euronext's trading system. The NSC system has a central order book for each security, and matches buy and sell orders electronically whenever prices permit. Real-time trade confirmation reports are transmitted electronically to members. This system has a number of advantages which include allowing a broad range of order types that can be combined within the central order book to improve liquidity and meet customer needs. The system features open architecture whereby the system can be accessed by customers with different activity profiles (order routing, liquidity providers, trading for own account) and supports the dissemination of the market data flow to distributors through a flexible data selection. Finally, the system has components to assure reliability and provide for a secure backup site.

The Commission has observed that execution price and speed of execution are not the only relevant factors in obtaining "best execution" of investor orders, and that other factors may be relevant, such as (1) the size of the order, (2) the trading characteristics of the security involved, (3) the availability of accurate information concerning the security and the availability of technology to process such information, and (4) the cost and challenges associated with achieving an execution in a particular market center.¹⁴

Consistent with the goal of "best execution," which remains the cornerstone of proposed Regulation NMS, the Euronext trading platform is uniquely positioned to satisfy the diverse needs of U.S. investors in accordance with the goals the Commission has outlined. An exchange such as Euronext is subject to robust regulatory oversight by its numerous home country regulators and Euronext has implemented policies and procedures which adhere to the highest

¹³ See, e.g., Registration Requirements for Foreign Broker-Dealers, Exchange Act Release No. 27017 (July 11, 1989) (adopting Rule 15a-6 under the Exchange Act); see also Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings, (the Commission approved certain tender offer and Securities Act registration exemptions for cross-border tender and exchange offers, business combinations, and rights offerings relating to the securities of non-U.S. companies.) Exchange Act Release No. 42054 (October 22, 1999).

¹⁴ See Proposed Rule: Regulation NMS, Exchange Act Release No. 49325 (February 26, 2004) at n.5.

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standards of investor protection. We respectfully suggest that the Commission's failure to recognize the comparable regulatory regimes governing non-U.S. exchanges and to provide alternatives to full exchange registration is short-sighted and will not serve to benefit U.S. investors.

Conclusion

Euronext believes its markets and trading systems offer efficient, cost-effective investment alternatives and strong investor protections for U.S. investors. Accordingly, Euronext desires to increase U.S. investors' access to the products available on its markets by, among other things, providing U.S. broker-dealers with remote screen terminals that would enable them to place orders directly on the Euronext markets. Euronext is of the view that such direct access to its markets will afford U.S. investors a greater variety of non-U.S. investment opportunities and more efficient, faster and less expensive execution of transactions in non-U.S. securities.

Euronext considers proposed Regulation NMS to be an important first step in modernizing and enhancing the U.S. securities markets. However, the Commission needs to expand the role of non-U.S. securities markets in fostering an environment where "best execution" can proliferate on a global basis and U.S. investors can benefit from the efficiency and innovation that direct participation and market competition fosters.

Thank you again for the opportunity to comment on proposed Regulation NMS. If you have any questions regarding our comments, please do not hesitate to contact myself at 212-839-5731 or Barbara J. Endres at 202-736-8287.

Respectfully submitted,

Dennis C. Hensley

cc: The Honorable William H. Donaldson
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