

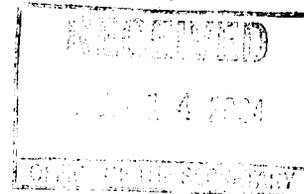


NetworkAppliance®

April 20, 2004

The Honorable William H. Donaldson
Chairman
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549

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Re: Regulation NMS; File No. S7-10-04

Dear Mr. Chairman:

As CEO of Network Appliance Inc., a leading provider of enterprise network storage solutions generating over \$1 billion in annual revenues, I would like to put forth our view as a NASDAQ-listed company on the trade through provisions of Regulation NMS.

We understand the importance of uniformity in regulation across markets. However, markets, being inherently different in structure, deliver differing levels of quality in terms of execution speed and certainty of fill. NASDAQ supports best execution, which includes best price, and provides a comprehensive form of investor protection.

Most importantly, we believe choice is what empowers the investor. Investors should have the freedom to trade based on their own priorities for best execution—be that price, certainty of fill or transaction cost. A viable opt-out provision to trade through is critical to protecting investors by providing them with the ability to choose.

We believe the idea that best price is always available on a manual market is fundamentally flawed. Today's computerized trading can occur in milliseconds with price differences in pennies. Requiring that an order be routed to a slower manual market displaying best price puts the investor at risk. Taking the time to allow human intervention increases the risk that the displayed price may not be available when the order is finally executed. By the time an order is executed on a manual market, the investor may get only a partial fill at the desired price or the order may not be filled at all.

Investors should have the ability to make a choice. Regulation will provide the greatest investor protection by creating opt out provisions that facilitate efficient market forces and boost investor confidence. I recommend that you work with NASDAQ to create a truly practicable opt out provision for trade through.

Sincerely,

Daniel J. Warmenhoven
Chief Executive Officer

Cc: Jonathan G. Katz
Secretary
Securities and Exchange Commission