Opening Statement of
Mr. Matthew Lavicka
on behalf of
Goldman Sachs

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Hearing on Regulation NMS
Panel on Market Access - Access Fees
April 21, 2004

Thank you, Mr. Chairman.

My name is Matthew Lavicka. I am a Managing Director in the Equities Division of Goldman, Sachs. Goldman, Sachs performs a wide range of functions in the financial markets. From capital raising to secondary trading to advising investors, we seek to provide our clients with a full range of services. We appreciate the opportunity to participate in these hearings and look forward to a continuing dialogue with the Commission and its Staff regarding our shared desire to strengthen our securities markets.

The access fee issue before this panel must be considered within the broader market structure context. As a general matter, we believe markets should be fair, open and transparent. Competition within fair and transparent markets should be based on providing value-added services such as better execution prices, enhanced liquidity, or sophisticated order handling capabilities. It should not be based on fees imposed on top of the posted quote in the NBBO.

From this perspective, the issue of access fees becomes relatively straightforward. We believe that transparency can only be achieved if quotes comprising the SEC mandated national best bid and offer reflect the true and complete value of the transaction. Best execution obligations, the 11Ac1-5 rule, and the proposed trade-through rule have elevated the NBBO to a key role as the benchmark for measuring price and execution quality in the equity markets. For this reason, when it comes to the NBBO, we believe that “what you see should be what you get.” Access fees that hide behind a quote mean that the quote is not what it says it is. If we are going to continue to use the NBBO as a benchmark for price discovery and best execution, then the SEC must ensure that the NBBO quote is an accurate representation of price.

Apart from these transparency concerns, we also believe that, for a quote to be part of the NBBO, it should be possible to execute against that quote in an efficient manner. In other words, in addition to being what it says it is, the NBBO should be available for immediate execution. Subjecting the quote to this requirement will help ensure the validity of using the NBBO as a benchmark.

Finally, we note that access fees may create an alternate way of quoting in subpennies, something Regulation NMS proposes to eliminate. For this reason and the transparency and accessibility reasons already mentioned, it is imperative that the SEC ensure that access fees do not distort the quote.

We believe that our markets are robust precisely due to the extent of the lively competition that exists. However, we think that competition should be based on the value of services provided to clients sending orders to a particular venue (services such as providing capital, deeper liquidity, flexible and sophisticated order types, and “smart” order routing/handling). It should not be based on hidden fees or burdens on intermarket access to a venue’s published quote in the NBBO.

In summary, if the NBBO is based on transparent and accessible prices, then broker-dealers like Goldman Sachs will be able to fulfill their duty to seek best execution for their customers' orders, and market participants will be assured of an accurate, meaningful and reliable benchmark

Thank you for your attention. I look forward to participating in the discussion.