PREPARED STATEMENT OF TESTIMONY

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BEFORE THE U.S. SECURITIES AND EXCHANGE COMMISSION

APRIL 21, 2004

Good afternoon. I'd like to thank the Commission and the Staff for the opportunity to testify on behalf of Brut, LLC. Fair, efficient access to public quotations is critical to a robust national market system. If there is any agreement regarding access fees, it is that they have been a topic of passionate debate. The Commission merits praise for its attempt to advance this process from discussion to decision.

The Commission should promote fair access without undue restriction of industry competition and innovation that consistently improve market quality over time. Should undesirable behaviors exist, narrowly-tailored involvement – not broad interference – strikes the appropriate balance between market forces and regulatory focus. Applying these principles, the access fee provisions of Reg NMS appear to be an unsuccessful attempt to improve market structure, a significant intervention in the economics of trading that does little to resolve current issues of access in today's markets.

When disciplined by competition, market center fee structures facilitate fair access. Automated agency markets provide traders with a high-technology, low-cost execution alternative. The current economic model of these firms incentivize providers of liquidity while charging those that access it, encourage the public display of limit orders and depth of trading interest, behaviors that many aspects of market structure regulation strive to promote. Intense rivalry among major market centers have kept such fees transparent to the financial community and in fair relation to the services provided. Market participants have validated this through broad linkage to and usage of these markets. Regulation of the fees these markets charge would not improve access to them.

The problems with current forms of access have little to do with fees. First, *de minims* market centers can voluntarily provide quotes to the public system through the Alternative Display Facility, and demand that market participants privately link to them no matter how small, or how far-fetched their business model. The burdens of requiring direct linkage to such markets are disproportionate to their liquidity. Second, exchanges have been allowed to begin trading Nasdaq-listed securities with inadequate order-acceptance and execution technology in place. Both scenarios present brokers with a Hobbesian choice: utilize inefficient access mechanisms to these markets or ignore them altogether. Both options place customer execution quality at risk.

The Commission can resolve these two issues without controlling prices. First, mandate that alternative trading systems under the five percent threshold of Reg ATS provide quotes to the public system only through an SRO with order-execution facilities. This would obviate the need for countless direct linkages and allow SRO rules to provide additional regulation of access to minor markets. Second, require SROs to develop meaningful automated access to their public quotations, especially where an SRO does not hold the primary listing for the relevant securities. Both measures would allow for responsible participation by emerging market centers, providing efficient linkages to them without radical revisions to rate structures.

This leaves the issue of locked and crossed markets. While Brut believes there can be a genuine debate on this topic, if the Commission concludes it is a problem, there is no doubt as to remedy. Banning the practice is the only way to ensure the behavior is eliminated and avoid unintended consequences. As discussed earlier, direct regulation of undesired conduct – as opposed to indirect regulation of alleged underlying motivation – is the best way to improve market quality while preserving what already works.

Once again, I'd like to thank the Commission for the opportunity and I look forward to a great discussion and any questions you may have for me.