

July 14, 2006

**Via Electronic Mail (rule-comments@sec.gov)**

U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090  
Attention: Nancy M. Morris, Secretary

**Re: File No. SR-NASD-2006-056; SEC Release No. 34-54003 (June 16, 2006) — Proposed Rule Change to Establish a Package of Real-Time and Near-Real-Time Data Products Called the Market Analytics Data Package; and**

**File No. SR-NASD-2006-072; SEC Release No. 34-54002 (June 16, 2006) — Proposed Rule Change to Modify the Fees for Trading and Compliance Data and the Data Package Available to NASD Member Firms via Nasdaq Trader.com**

Ladies and gentlemen:

We appreciate the opportunity to provide comment, in response to the Commission's request in Securities Exchange Act Release Nos. 54003 (June 16, 2006) (the "Market Analytics Package Release") and 54002 (June 16, 2006) (the "Trading and Compliance Data Package Release").

Given the issues raised by both proposals regarding the potential distortion of competitive markets in trade data caused by SRO participation in those markets and the significant and adverse impact of such SRO conduct on investors and the securities markets, we advise the Commission that this letter sets forth only our preliminary comments on these important rule filings and we respectfully request that the Commission grant Bloomberg an extension to August 15 to file a further comment developing in detail the preliminary points presented in this letter.

Description of the Proposals

*Nasdaq's Market Analytics Package*

Nasdaq's Market Analytics Package consists of two value-added data products and two analytics. The value-added data products are Market Velocity and Market Forces:

- *Market Velocity* is described in the Market Analytics Package Release as similar to the audible noise and visible activity traders use on a physical trading floor to detect changes in market direction, momentum, or liquidity.
- *Market Forces* categorizes orders in the Nasdaq market by whether they are buys or sells and gives an indication of market direction. In its filing, Nasdaq states that both Market Velocity and Market Forces may include shares not visible in existing quotation and order data feeds or in its quotation montage.

The Market Analytics Package Release describes two analytics Nasdaq will offer in the Market Analytics Package, Competitive VWAP Benchmark and CVWAP Leaders. Competitive VWAP Benchmark, which Nasdaq will calculate on the basis of inputs market participants provide, will provide the best and worst average price performance by actual market makers trading on the Nasdaq Market Center execution system. CVWAP Leaders, which Nasdaq also will calculate on the basis of inputs market participants provide, is a periodic market maker leader board that will enable institutional investors to identify the firms with the most experience in trading a particular stock or type of stock.

Following an introductory trial period during which the Market Analytics Package will be offered free, Nasdaq proposes to charge a monthly distributor fee of \$2,000/month, a monthly enterprise license of \$4,000/month and an annual enterprise license of \$36,000/year.

#### *Nasdaq's Trading and Compliance Data Package Proposal*

Nasdaq proposes to modify both the fees for and data components of its Trading and Compliance Data Package. Using the Trading and Compliance Data Package, NASD member firms can currently obtain monthly compliance report cards (outlining a firm's own compliance with various NASD rules), monthly summaries (providing monthly trading volume statistics for the top 50 market participants broken down by industry sector, security or type of trading), and historical research reports (providing a variety of historical trading data).

The Trading and Compliance Data Package Release describes Nasdaq's proposal to enhance the current data package by including new OATS compliance report cards and new historical research reports (e.g., Time and Sales with Inside Quotes and NASDAQ Market Center Activity Reports for Other Exchange-Listed Securities).

Nasdaq proposes to increase the fee for the "basic" level service of the enhanced Trading and Compliance Data Package product from \$100/month to \$130/month and for the "premium" level from \$130/month to \$160/month.

#### Issues Raised by the Proposals

- *"Voluntary" in name only.* Nasdaq describes its Market Analytics Package as voluntary, but the data that nourish the package are uniquely within Nasdaq's

possession as a regulator — members have no choice but to give the data to Nasdaq for free. Given the monopoly position Nasdaq thus occupies and its zero cost of goods sold, the decision by market participants to buy the data and accompanying analytics will hardly be voluntary. The period during which Nasdaq will offer the Market Analytics Package for free is the equivalent of testing the market for potential demand. Once market participants elect to use Market Velocity, Market Forces and VWAP analytics in significant numbers, all other market participants wishing to remain competitive will have no choice but to purchase the Market Analytics Package to remain competitive. In effect, having the data and analytics in the Market Analytics Package will become a condition to accessing the Nasdaq stock exchange.

- *Exploitation of monopoly.* Nasdaq's Market Analytics Package places Nasdaq in direct competition with data vendors, but with the unique, monopoly advantages that accrue to Nasdaq as a government-sponsored monopoly. As noted above, Nasdaq's members are required to provide Nasdaq with those data and Nasdaq obtains them free of charge. Data vendors wishing to compete with Nasdaq by offering comparable data and analytics packages would first have to license the component data from Nasdaq.
- *Nasdaq hiding the fee ball.* In neither filing, but particularly in the Market Analytics Package filing, does Nasdaq provide a basis for the fees it proposes to charge for these essential data and analytics. If Nasdaq's past behavior is any guide, Nasdaq will file the fees later, seeking immediate effectiveness without public comment.
- *Impact on market participants and investors.* Nasdaq's Market Analytics Proposal not only threatens to distort competition in the market for value-added data and analytics, but it also would impose unacceptable costs on market participants, and through them on investors. As an SRO acting as a monopoly provider, Nasdaq need not face the competition of free marketplace that would limit both the number and cost of value-added data products and analytics.
- *Inappropriate exploitation of OATS.* With respect to Nasdaq's Trade and Compliance Data Package proposal in particular, the addition of an OATS report card to the data package raises the question of the suitability of Nasdaq's use of OATS data for commercial purposes, use that the Commission expressly prohibited in its order approving Nasdaq's exchange registration.

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In view of (i) the importance and public significance of these proposals and their implications for the market in financial information, (ii) the costs they impose on market participants and investors, and (iii) the questions they raise regarding the appropriate limitations on monopoly conduct by SROs, we respectfully request that the Commission extend the

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comment deadline to August 15, 2006 to permit Bloomberg to submit a more detailed comment addressing these issues.

Respectfully submitted,

*Bruce Garland* by R.D.B.

cc: The Hon. Christopher Cox, Chairman  
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The Hon. Cynthia A. Glassman, Commissioner  
The Hon. Roel C. Campos, Commissioner  
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