

34-55011 - 87# 24

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6TH DISTRICT, LOUISIANA  
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**COMMITTEE ON  
VETERANS' AFFAIRS**  
SUBCOMMITTEE ON HEALTH  
SUBCOMMITTEE ON  
ECONOMIC OPPORTUNITY

**Congress of the United States**  
**House of Representatives**  
Washington, D.C. 20515-1806

October 1, 2007

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CHAIRMAN'S  
CORRESPONDENCE UNIT

Chairman Christopher Cox  
Commissioners Paul Atkins, Annette Nazareth and Kathleen Casey  
U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549-0609  
Attention: Nancy M. Morris, Secretary

**Re: In the Matter of NetCoalition, File No. SR-NYSEArca-2006-21**

**RECEIVED**  
OCT 16 2007  
OFFICE OF THE SECRETARY

Dear Chairman Cox and Commissioners Atkins, Nazareth and Casey:

The advent of for-profit exchanges presents a number of challenges for those concerned with protecting investors and consumers. With the exchanges now being for profit and relying in part on data to generate that profit, the regulatory rules and process moving forward must be transparent and allow all interested parties the opportunity to raise concerns.

In granting the NetCoalition Petition, the Commission has taken an important step toward exploring some of these challenges. I would urge the Commission to review not only the cost issues raised in the Petition, but also the access issues expressly raised by the Petition, including the concerns flowing from self-approval of data products by for-profit exchanges.

The SEC has consistently and unambiguously rejected the appropriation of regulatory data for commercial purposes. Specifically, the Commission articulated a bright line – unless data is made available to the public at-large on non-discriminatory terms, no regulatory data may be used in a commercial product.

In view of this bright line standard, I am concerned about the use of a process intended to facilitate consideration of "non-controversial" items to reverse this Commission holding. As you know, Section 19(b) of the Securities Exchange Act of 1934 requires public notice and comment, followed by affirmative Commission approval, before most exchange rules can become effective. There is a category of largely housekeeping rules that can become effective immediately upon filing, without public notice and comment and without Commission approval. Utilization of this process, which is reserved for "non-controversial" items, to self-approve the commercial use of regulatory data is outside the scope and intended purpose of this provision of law.

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Understandably, the self-approval of data products has been protested vigorously and repeatedly in public submissions to the Commission by the U.S. Chamber of Commerce, Securities Industry and Financial Markets Association, Securities Traders Association, NetCoalition and Bloomberg LP. This procedure has caused significant controversy. Accordingly, I urge the Commission to take appropriate action to ensure that all market participants can have confidence and certainty in the process.

In light of these events, the Commission has decided to undertake a comprehensive review of market data. I would urge the Commission to review all recent self-approvals and – unless the Commission's interpretation of the law has had reason to change – reinstate the Commission's original holding. Further, I would urge the Commission to consider if the approval process for new data products can be improved to promote innovation; however, public comment and Commission review should continue as critical elements of this process.

Thank you for your consideration of my views on these matters. With warmest personal regards, I remain

Sincerely yours,

A handwritten signature in black ink, appearing to read "R. Baker", written in a cursive style.

Richard H. Baker  
Member of Congress