



DIVISION OF
MARKET REGULATION

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

December 29, 2006

Ms. Ann Vlcek
Vice President and Associate General Counsel
The Securities Industry and Financial Markets Association
1425 K Street, NW
Washington, DC 20005-3500

RE: Request for Temporary No-Action Relief from Exchange Act Rules 17a-3, 17a-25, and 17a-5 Relative to NASDAQ's Commencement of Operation as an Exchange.

Dear Ms. Vlcek:

This letter is written in response to your letter, dated December 29, 2006, in which the Securities Industry and Financial Markets Association (or "SIFMA") requests both an extension of the No Action relief granted by the staff of the Division of Market Regulation (the "Division") on July 31, 2006, as well as certain additional relief as described below, regarding the NASDAQ Stock Market LLC's ("NASDAQ") operation as a national securities exchange.

I. Background

On July 31, 2006, the staff of the Division confirmed to the Securities Industry Association (now SIFMA) by letter that it would not recommend to the Commission enforcement action under Rules 17a-3 or 17a-25 of the Securities Exchange Act of 1934 ("Exchange Act") if a broker-dealer reflects 1) NASDAQ as an over-the-counter ("OTC") market instead of an exchange market, 2) NASDAQ securities as OTC securities instead of exchange-listed securities, and/or 3) a broker-dealer as a member of NASD rather than as a member of NASDAQ (or vice versa) on required books and records and securities transaction information submitted to the Commission.¹ This relief was extended with respect to NASDAQ UTP Plan securities,² and is due to expire on December 31, 2006.

¹ See Securities Industry Association, 2006 SEC No-Act. LEXIS 582 (Jul. 31, 2006). Hereinafter, "securities transaction information submitted to the Commission" may also be referred to as "transaction reports."

² Transactions are reported pursuant to two national market system plans: Nasdaq-listed securities are reported to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (referred to either as "UTP Plan securities" or "NASDAQ-listed securities"); securities listed on other national securities exchanges (i.e., the New York Stock Exchange and the American Stock Exchange) are reported to the Consolidated Transaction Association Plan (referred to as "CTA Plan securities" or "non-NASDAQ-listed securities").

At the time the relief was requested, NASDAQ believed that it would become a national securities exchange for trading both UTP Plan and CTA Plan securities and would have completed the integration of its systems to its Single Book execution system platform for both UTP Plan and CTA Plan securities prior to December 31, 2006. However, NASDAQ has since run into some obstacles to meeting that target.

At this point NASDAQ is operating as an exchange market for NASDAQ-listed securities and it has integrated its systems to its Single Book execution system platform for those securities. However, NASDAQ is not presently operating as an exchange market for non-NASDAQ-listed securities and it has not integrated its systems to its Single Book execution system platform for non-NASDAQ-listed securities. NASDAQ presently believes that it will begin operating as an exchange market for non-NASDAQ-listed securities and will integrate its systems to its Single Book execution system platform for those securities on the same day.

II. Requested Relief

1. Extension of Prior Relief for NASDAQ-listed Securities

SIFMA believes that some broker-dealers may not have planned to be able to distinguish between NASDAQ-listed securities and non-NASDAQ-listed securities after December 31, 2006 because they were relying on all NASDAQ trades being exchange-listed after that date and, therefore, they may need additional time to make programming changes.

Consequently, SIFMA is requesting that the staff of the Division of Market Regulation extend the relief it granted to broker-dealers last July 31, 2006 relating to NASDAQ-listed securities from December 31, 2006 to sixty days following the date NASDAQ begins operating as an exchange for non-NASDAQ-listed securities and completes the integration of its systems to its Single Book execution system platform for those securities.

2. Request for Relief Regarding Non-NASDAQ-listed Securities

A. Broker-dealers that have Already Programmed Systems Changes

Some broker-dealers have already updated their systems so that, after December 31, 2006, their required books and records and transaction reports will reflect, for transactions in non-NASDAQ-listed securities 1) NASDAQ as an exchange market instead of an OTC market, and 2) the transaction as having occurred on an exchange market rather than an OTC market, and/or 3) a broker-dealer as a member of the NASDAQ rather than as a member of the NASD. As a result of NASDAQ's delay, these broker-dealers' required books and records and transaction reports will be incorrect until the NASDAQ begins operating as an exchange for non-NASDAQ-listed securities and