



**Joseph Rizzello**  
Chief Executive Officer

February 27, 2007

Submitted Via Electronic Mail

Ms. Nancy M. Morris, Secretary  
U.S. Securities and Exchange Commission  
100 F St. N.E.  
Washington, DC 20549-0609  
Email: rule-comments@sec.gov

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

Dear Ms. Morris,

The National Stock Exchange ("NSX") appreciates this opportunity to comment on the Commission's review of the approval by the Division of Market Regulation of a rule change that would establish fees to be charged by NYSEArca, Inc. ("NYSEArca") for its Arca Book market data product ("NYSE Arca Data").<sup>1</sup> This comment letter is filed in connection with the Commission's order<sup>2</sup> granting the petition by NetCoalition for review of the Division's approval of the NYSE Arca Data fee proposal. NSX's view is that this fee approval should not be implemented until the Commission has first conducted a thorough, broad-based review of the securities market data structure and, based on such a review, reconsiders the NYSE Arca Data fee proposal.

NSX requests that the Commission examine closely the fundamental issues concerning both "depth of book" and consolidated real time market data. Recent, dramatic changes in technology and the competitive landscape affecting securities exchanges have transformed the manner that information is currently being produced and accessed by market participants. The Commission should carefully consider the alternatives now available to modernize and optimize the dissemination of securities markets data.

Under the National Market System ("NMS"), consolidated data is essentially a rate-fixed product which is redistributed back to the broker-dealers who are required to supply it. Not only is the markup for the data excessive<sup>3</sup>, but also the data has already become insufficient by itself

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<sup>1</sup> See Securities Exchange Act Release No. 34-54597 (October 12, 2006), (October 12, 2006)

<sup>2</sup> See Securities Exchange Act Release No. 34-55011 (December 27, 2006), (December 27, 2006)

<sup>3</sup> In 2003, consolidated market data revenue totaled \$386 million, with network expenses of only \$38 million. See Exchange Act Release No. 49,325 (February 26, 2004), 69 Fed. Reg. 11126, 11179 (March 6, 2004)

as a tool for investors to make trading decisions. One reason for this is that unfettered access to consolidated quotation data at multiple price points is necessary as liquidity naturally aggregates around multiple penny increments.

The Commission has outlined several key objectives for Regulation NMS, including transparency, fairness, and access. These key policy objectives ultimately call for the automation of all markets wherever possible. We believe NMS will foster a more competitive and efficient secondary market, one which mitigates unfair informational advantages because markets will be both better informed and more competitive. Decimalization and technology advances in order management systems, however, have served to reduce the displayed liquidity at the top of book. As these trends continue, the tangible value to the marketplace of consolidated top of book data will continue to decrease. In the meantime, until the market data fee structure is reformed, broker-dealers will still be forced to purchase market data at a fixed and, we believe, arbitrary price. Market participants who do not purchase the exchanges' depth of book data will suffer the types of informational disadvantages that Regulation NMS seeks to eradicate.

The Exchange Market Data Coalition has stated in its comment letter that "each Exchange certainly considers market data to be a significant product of their core business and an appropriate means to fund operations, including key regulatory activities..." and that "revenue fosters innovation"<sup>4</sup>. NSX disagrees with these statements. In our view, it is competition, or the opportunity for competition, that fosters innovation – not revenue. More importantly, to the extent that market data revenue is used to fund regulatory activities, we submit that it would be more logical and transparent to charge an explicit regulatory fee for these services.

Market forces today clearly indicate that the \$400 million consolidated data revenue pool is too large. NSX estimates that in 2006, roughly \$50 million of the \$400 million market data revenue pool was actually rebated back to broker-dealers/subscribers. This amount would be higher still if not for the limits on rebate amounts imposed under Commission regulation. Furthermore, the securities industry levies market data fees on a per user basis, but rebates back market data fees on a per trade basis, in amounts that are limited, we believe artificially, by SEC rule. This results, at best, in a misappropriation of fees and, at worst, an incentive for adverse gaming behavior.

We believe the Commission should explore all possible approaches to reforming market data consolidation and dissemination with a minimum of market disruption, including the means through which exchanges fund their vitally important regulatory functions. We recommend that all exchanges be required to consolidate and distribute their real time top *and* depth of book data, with the associated costs imposed only on those investors who act on the information. Such a

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<sup>4</sup> Comments of Exchange Market Data Coalition, January 26, 2007

surcharge would be uniformly applied in the same manner as are Section 31 fees that fund SEC regulatory activities. Unlike Section 31 fees, however, the surcharge would be collected by an appropriate securities industry entity. As a result, the costs borne by each self regulatory organization for market data collection, consolidation, dissemination, and regulation thereof would be explicitly paid for by investors who transact in the markets, and not by passive investors who merely wish to access basic quotation information. This basic quotation information, we believe, is no longer limited to top of book quotes. In today's markets, it is vital that both consolidated depth of book quotation data, in addition to last sale information, be disseminated promptly into the marketplace.

Potential distributors of this consolidated data would not be limited solely to those who can afford a variety of access fees. Instead, the consolidated data would be available to any entity with a commercial interest in distributing data, or who has the creativity to repackage it into a product more valuable or useful to the investing public. Exchanges could continue to offer market data services. Similarly, other businesses, such as technology companies, could be invited to compete and innovate. This competition would be premised on non-discriminatory access to data.

NSX believes that the adoption of these recommendations would provide immediate and substantial benefits for the entire U.S. capital markets system. These reforms would eliminate several hundred million dollars in unnecessary and misallocated fees imposed on the investing public, while simultaneously spurring the free market to create an environment where market data can be creatively and profitably redistributed worldwide.

Based on the foregoing, NSX urges the Commission to consider and adopt the following proposals:

1. Break the monopoly on real time consolidated top and depth of book data and deliver it to the innovators. Allow a market to develop for the repackaging of this data and new products that will follow.
2. Charge the securities industry an explicit fee for the costs of data consolidation, which should be embedded in the transaction cost. We believe this fee in the aggregate would be significantly less than the current cost of consolidated data.
3. Exchanges should be free to charge explicitly for their costs associated with regulation, to the extent they choose to do so. If a regulatory fee is transaction based, it should be shared equally by both parties to the transaction.

NSX today is the beneficiary of the revenue it receives from market data fees for transactions occurring there. Our arguments for dismantling the existing consolidated market data fee and revenue allocation formulas would cost NSX and other exchanges substantial

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revenue. NSX believes, however, that fair and free access to basic market information certainly benefits investors. By allowing more potential participants to deliver innovation to the industry, fair and free access to basic market information will provide the entire U.S. securities market a competitive advantage globally.

NSX believes that the goals of Regulation NMS ultimately will be frustrated unless the market data issue is fully and fairly addressed. The Commission should seize this opportunity to articulate new standards to govern decision-making in these areas. Given the strong positions articulated on all sides of this complex issue, we believe the Commission should consider issuing a concept release in order to prompt thorough industry wide discussion. Until these important issues are comprehensively reviewed and vetted, we urge the Commission to continue the stay on the NYSE Arca Data fee proposal and to delay approval of any proposed exchange rule to establish fees for depth of book information.

Thank you for the opportunity to express these views. We hope that the Commission will not hesitate to call upon us if we may provide you additional information or assistance concerning these issues.

Respectfully submitted,

/s/

Joseph Rizzello  
Chief Executive Officer  
National Stock Exchange, Inc.

cc: Chairman Christopher Cox  
Commissioner Paul S. Atkins  
Commissioner Roel C. Campos  
Commissioner Kathleen L. Casey  
Commissioner Annette L. Nazareth  
Erik R. Sirri, Director, Division of Market Regulation