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November 18, 2011

Ms. Elizabeth M. Murphy  
Secretary  
US Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

**Re: *Proposing Release on Consolidated Audit Trail (Release No. 34-62174; File No. S7-11-10)***

Dear Ms. Murphy:

The NASDAQ OMX Group, Inc. (“NASDAQ OMX”) is filing this supplemental comment letter on the Securities and Exchange Commission’s proposal for a consolidated audit trail (“CAT”) to address several issues critical to the development of a state of the art, cost effective and scalable audit trail that will enhance the confidence of investors in the safety and fairness of our markets.<sup>1</sup> The “flash crash” of May 6, 2010 showed how easily that confidence can be shaken when regulators do not have immediate access to critical data. Market fragmentation and the limits of current surveillance tools also have eroded confidence in regulators’ ability to detect fraud and manipulation.

The Commission’s proposing release recognized these problems and set several important goals for the CAT:

- A system that facilitates cross-market surveillance by providing uniform information to regulators and detailed customer information;
- Information that is available real-time or near real-time;
- Implementation of the CAT within two years for all NMS securities including cash equities and options;

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<sup>1</sup> Our prior comment letters, Comment Letter from Joan Conley, Corporate Secretary, NASDAQ OMX, to Elizabeth Murphy, Secretary, Commission, dated August 12, 2010 (available at <http://sec.gov/comments/s7-11-10/s71110-60.pdf>) and Comment Letter from executives of FTEN to Elizabeth Murphy, Secretary, Commission, dated August 9, 2010 (available at <http://sec.gov/comments/s7-11-10/s71110-52.pdf>), together with hand-outs pertaining to a presentation made by FTEN to the SEC on November 18, 2009 and a 2004 White Paper by FTEN entitled "Time Equals Risk" (available at <http://sec.gov/comments/s7-03-10/s70310-75.pdf>) which were distributed at a July 29, 2010 meeting between the Division of Trading and Markets and executives of FTEN, are incorporated herein.

- A scalable platform that will enable “timely” expansion of the CAT to non-NMS securities, debt securities, primary securities transactions and, ultimately, all other products under the Commission’s jurisdiction; and
- Retention of data in an easily retrievable format for a significant period of time to better identify patterns of conduct and serial manipulators.

NASDAQ OMX believes that these goals are critical to the development of a system that will materially enhance regulation.

We disagree with commenters who suggest that the Commission should lower its expectations for the CAT and accept a more limited audit trail based exclusively on existing systems. At this preliminary stage the Commission’s focus should be on a regulatory framework that will facilitate development of the best system at a reasonable cost to the industry. The Commission would be doing a disservice to investors by defaulting so early in the process to the status quo on the assumption that anything better would be impossible or too expensive.

A number of renowned technology companies, including NASDAQ OMX,<sup>2</sup> submitted comment letters with innovative and cost-effective ideas that could greatly enhance surveillance and provide regulators with useful tools to monitor compliance and systemic risk. These technology providers should be given the opportunity to prove their worth in the design process, subject to the guiding principle that the system must have the minimum cost and complexity necessary to achieve the goal of significantly enhanced regulation.

In this regard, NASDAQ OMX commends FINRA for its thoughtful blueprint for a CAT based on its existing OATS system.<sup>3</sup> This blueprint shows how the overall cost of the audit trail could be dramatically reduced by leveraging the existing data collection functionality of OATS – or a new system that reads data formatted for OATS – that thousands of firms already use to provide equities trading data to regulators. Using the existing OATS format protocols (which establish the file structures) as the basis for developing the CAT would reduce the programming time needed by member firms to prepare for the CAT. OATS standing alone, however, would not satisfy the Commission’s goals for the CAT. For example, OATS does not accommodate options data and FINRA is not able to provide a timeline for when this data could be added to enhance surveillance across related asset classes. FINRA’s 18-month development schedule and \$100 million to \$125 million development budget is for equities only. FINRA is also silent on whether OATS could be expanded to the other products within the Commission’s jurisdiction. Lastly, OATS has been developed as a historical trade reporting facility whereas CAT specifies

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<sup>2</sup> In addition to operating 24 markets, three clearing houses and five central securities depositories around the world, NASDAQ OMX provides technology to 70 exchanges, 35 regulators and 70 international brokerage clients. NASDAQ OMX also operates the securities information processor under the UTP Plan.

<sup>3</sup> See, Letter from Richard G. Ketchum, Chairman and CEO, FINRA, to Carlo di Florio, Director, Office of Compliance Inspections and Examinations, and Robert Cook, Director, Division of Trading and Markets, Commission, dated April 6, 2011.

the need for real-time trade data surveillance and analysis capabilities. The Commission should not assume that this is the best technology available so early in the process.

The participants in the CAT national market system plan may determine that the best model for the audit trail might combine legacy formats such as OATS with a more modern and scalable technology architecture and deployment methodology. For example, NASDAQ OMX proposes a CAT powered by a combination of its FTEN and SMARTS technology<sup>4</sup> that would provide the following benefits:

- Cutting edge technology that can be improved and expanded to meet the demanding standards of regulators and financial market participants;
- Platform architected from the ground up to support multiple asset classes that can be expanded beyond the Commission to include other government regulators including the Commodity Futures Trading Commission, Department of Treasury, the Federal Reserve and Federal Deposit Insurance Corporation;
- Platform would support real-time provision of data or, as proposed by SIFMA, “near real-time” data available within 10 to 15 minutes using “drop copies” that are less intrusive on order management systems;<sup>5</sup>
- Where possible, platform would collect information directly from exchanges and other sources of information to minimize reporting obligations on market participants at various stages in the life cycle of an order;
- Capturing information directly from exchanges by leveraging existing FTEN and SMARTS technology would provide more granular information than FINRA suggests in its blueprint for CAT without extending development timelines beyond those contemplated in the FINRA blueprint proposal;
- Platform would immediately include cutting-edge data mining, modeling and analytic capabilities as well as real-time risk management and surveillance capabilities that could leverage data storage and retrieval capabilities as determined by participants in the CAT national market system plan and the Commission.

A combination of this FTEN/SMARTS functionality with the OATS data format could produce an advanced audit trail with the minimum impact on member firms. In fact, we believe that this

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<sup>4</sup> FTEN, a NASDAQ OMX company, offers real-time, cross-asset, cross-venue risk management solutions that provide market participants with intraday transparency and control over their financial securities trading. FTEN’s technology supports the International Organization of Securities Commissions (“IOSCO”) Principle #5 of IOSCO’s Principles for Direct Access (see [www.iosco.org/library/pubdocs/pdf/IOSCOPD332.pdf](http://www.iosco.org/library/pubdocs/pdf/IOSCOPD332.pdf)) which states that “[m]arkets should provide member firms with access to relevant pre and post-trade information (on a real time basis) to enable firms to implement appropriate monitoring and risk management controls” and, as a result, allows firms to monitor and control their intraday risk. SMARTS, a NASDAQ OMX company, offers surveillance and compliance solutions that are the industry benchmark for the global exchange, regulator and broker community. Installed in more than 35 national exchanges and regulators and 60 market participants across 55 markets, SMARTS is the world’s leading provider of surveillance and compliance technology.

<sup>5</sup> See, Letter from James T. McHale, Managing Director, SIFMA, to David Shillman, Associate Director, Division of Trading and Markets, Commission, dated January 12, 2011.

Ms. Elizabeth M. Murphy

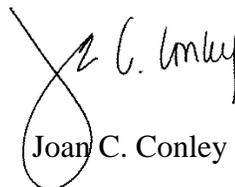
November 18, 2011

Page 4

more advanced CAT system can be expanded to equities and options within the same 18-month initial phase at a cost no more than FINRA estimates for an equity-only CAT based solely on OATS. A more modern CAT could provide the exchanges and market participants with additional savings in their own operations by leveraging the audit trail data for internal storage and regulatory requirements (e.g., in cooperation with FINRA, a new CAT system could lessen certain administrative burdens of market participants in complying with current OATS obligations). Lastly, a more modern approach to CAT could reduce overall costs to the industry by facilitating cross asset capabilities sooner and at a lower cost than outlined in the FINRA OATS proposal while increasing investor confidence due to increased accountability and transparency in financial markets.

We respectfully request that any final Rule 613 adopted by the Commission preserve the opportunity for NASDAQ OMX and other technology firms to present their proposals for an updated and more cost-effective CAT to the national market system plan that will ultimately select the technology provider. We believe a transparent acquisition process, with input from the Commission and market participants, is the best way to ensure that the CAT contributes to investor confidence and market integrity. We look forward to working with the Commission and our fellow self regulatory organizations to implement this important proposal.

Respectfully submitted,



Joan C. Conley

cc: The Hon. Mary L. Schapiro, Chairman  
The Hon. Elisse B. Walter, Commissioner  
The Hon. Luis A. Aguilar, Commissioner  
The Hon. Troy A. Paredes, Commissioner  
The Hon. Daniel M. Gallagher, Commissioner  
Robert W. Cook, Director, Division of Trading and Markets  
David Shillman, Associate Director, Division of Trading and Markets