



Writer's Direct Dial: 202.624.1462

August 9, 2006

The Honorable Christopher Cox
Chairman
U.S. Securities and Exchange Commission
100 F Street, N.W.
Washington, D.C. 20549

**RE: File No. SR-NASD 2006-056; SEC Release
No.34-54003 (June 16, 2006)**

**File No. SR-NASD-2006-072; SEC Release
No.34-54002 (June 16, 2006)**

**File Nos. SR-NYSEArca-2006-21; SEC Release No. 34-53952
(June 7, 2006) and SR-NYSEArca 2006-23; SEC Release No.
34-53951 (June 7, 2006)**

Dear Chairman Cox:

The Internet is one of the most dynamic forces in our economy, creating new ways of doing business and providing unprecedented convenience, choice and access to information for hundreds of millions of users worldwide. As the collective public policy voice of the world's leading internet companies, NetCoalition is committed to building user confidence in the Internet through responsible market-driven policies; preserving the open and competitive environment that has allowed the Internet to flourish; and ensuring the continued vitality of the Internet through active dialogue with policymakers.

The ready availability of market data coupled with the technology of the Internet has helped revolutionize the financial services sector. The individual investor has been empowered with information, and our capital markets have been the beneficiaries.

The advent of the for-profit exchange raises significant questions and conflicts that may imperil the continued ready availability of market data. In recognition of the new challenges posed by for-profit exchanges which retain government-granted market data monopolies, the Commission wisely proposed that the status of market data be comprehensively reviewed as part of the Commission's pending SRO Concept Release.¹

¹ See SEC Release No. 34-50700 (File No. S7-40-04) November 19, 2004.

Recent proposals by the New York Stock Exchange and the Nasdaq Stock Market, however, threaten to render this promised review irrelevant. In recent months, the NYSE has proposed—and the Commission has approved—a new Retail Trading Product that will run \$1500 monthly.² Pending before the Commission is an NYSE proposal to establish significant new fees (\$30 per professional per device, \$15 per nonprofessional per device) to receive ArcaBook Data.³ ArcaBook Data has, of course, historically been available for free. Pending before the Commission are Nasdaq proposals to offer an analytics package at a monthly distributor fee of \$2,000, while simultaneously raising its "basic" level service for its Trading and Compliance Data Package by 30%.⁴

These proposals raise significant questions. For example:

- Should for-profit SROs have preferential or exclusive rights to data that they receive by virtue of being a government sponsored monopoly? For example, Nasdaq proposes to utilize for commercial purposes Order Audit Tracking System (OATS) data that it receives as a regulator. (Despite the fact that Commission expressly prohibited this use in its order approving the Nasdaq exchange application.) If monopoly data is to be used in commercial products, it must be made available on reasonable and non-discriminatory terms -- otherwise the Commission is simply empowering exchanges to leverage their regulatory monopoly downstream into an information monopoly. That would undermine the open and competitive market that has allowed the Internet to thrive.
- Should for-profit SROs be permitted to charge whatever price they choose for monopoly market data? The pending proposals offer no basis for assessing the actual costs of consolidating market data or how fees are determined. Indeed, the only guidance offered is the assertion that one SRO's monopoly fees are reasonable if they are in line with the other SRO's monopoly fees. None of these fees are subject at any point to the discipline of market forces. Are investors' interests served by the NYSE and Nasdaq justifying their fees by reference to each others unexamined fees?

These, and many other questions, should be comprehensively reviewed as part of the Commission's pending SRO structure release. They should not be decided in the

² See SEC Release No. 34-53834 (File No. SR-NYSE-2006-32) May 18, 2006

³ See SEC Release No. 34-53951 (File No. SR-NYSEArca-2006-23) June 7, 2006 and SEC Release No. 34-53952 (File No. SR-NYSEArca-2006-21) June 7, 2006.

⁴ See SEC Release No. 34-54003 (File No. SR-NASD-2006-056) June 16, 2006 and SEC Release No. 34-5002 (File No. SR-NASD-2006-072) June 16, 2006.

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context of abbreviated 21-day comment periods. This is particularly critical as market observers believe these pending proposals will be followed by numerous additional proposals.

Several years ago, NetCoalition led a broad coalition of entities in combating proposed "database" legislation supported by Nasdaq and the NYSE. Those exchange-supported proposals would have impeded use of data by creating new and unprecedented property rights in facts. Congress rejected these proposals, after years of debate, in part because of significant concern about the deleterious impact of those proposals on the Internet. These current exchange proposals appear to be a large step in the direction of that database legislation—impeding the ability to access and utilize information in this key economic sector.

We appreciate the significant work that the SEC, under your leadership, has done to help make readily accessible the data that companies are required by law to provide the Commission. This additional corporate transparency should be particularly helpful to small investors. Affordable access to market data—and the ability of all to compete in adding value to that data—is as important.

We urge that significant market data decisions be made in the context of the SRO structure release, and that the Commission not allow for-profit exchanges to exploit their government sponsored monopoly to the detriment of investors and the Internet.

We would be happy to discuss this with you and your colleagues.

Sincerely,



Markham C. Erickson
Executive Director and General Counsel

Cc: The Honorable Paul S. Atkins
The Honorable Roel C. Campos
The Honorable Kathleen Casey
The Honorable Annette Nazareth