



July 14, 2006

Ms. Nancy Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.W.
Washington, DC 20549-9303

Re: File No. SR-NASD-2006-056; SEC Release No. 34-54003 (June 16, 2006) — Proposed Rule Change to Establish a Package of Real-Time and Near-Real-Time Data Products Called the Market Analytics Data Package

File No. SR-NASD-2006-072; SEC Release No. 34-54002 (June 16, 2006) — Proposed Rule Change to Modify the Fees for Trading and Compliance Data and the Data Package Available to NASD Member Firms via Nasdaq Trader.com

Dear Ms. Morris:

The Market Data Subcommittee of the Technology and Regulation Committee of the Securities Industry Association ("SIA")¹ appreciates the opportunity to comment briefly on these significant Nasdaq proposals. Collectively, the proposed Nasdaq Market Analytics Package and the proposed Nasdaq Trading and Compliance Data Package Proposal raise once again a number of profound concerns that the industry has raised in the context of previous SRO market data filings.

¹ The Securities Industry Association brings together the shared interests of approximately 600 securities firms to accomplish common goals. SIA's primary mission is to build and maintain public trust and confidence in the securities markets. SIA members (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. According to the Bureau of Labor Statistics, the U.S. securities industry employs nearly 800,000 individuals, and its personnel manage the accounts of nearly 93 million investors directly and indirectly through corporate, thrift, and pension plans. In 2004, the industry generated \$236.7 billion in domestic revenue and an estimated \$340 billion in global revenues. (More information about SIA is available at: www.sia.com.)

The first issue raised is simply one of process. These filings speak to fundamental decisions not only on market data, but also on the new role of for-profit exchanges in our markets. Many of these decisions were to have been made as part of the pending SRO structure release. These filings risk establishing "facts on the ground" that will potentially render the promised, comprehensive consideration of market data issues irrelevant. An abbreviated, 21-day comment period is simply too brief for the industry to provide the extensive analysis these proposals deserve. We request that the comment period be extended so that SIA and other interested parties have sufficient time to provide more detailed comments.

The second issue raised is that the filings are deficient. The filings do not provide any justification for the proposed fees. Following an introductory trial period during which Nasdaq's Market Analytics Package will be offered free, Nasdaq proposes to charge a monthly distributor fee of \$2,000/month, a monthly enterprise license of \$4,000/month, and an annual enterprise license of \$36,000/year. Nasdaq's Market Analytics Package consists of "one or more" of the following value-added analytical data products: Market Velocity, Market Forces, Competitive VWAP Benchmark, and CVWAP Leaders. "Market Velocity" is described as simulating the audible noise and visible activity traders use on a physical trading floor to detect changes in market direction, momentum, or liquidity. "Market Forces" categorizes orders in the Nasdaq market by whether they are buys or sells and gives an indication of market direction. In its filing, Nasdaq states that both Market Velocity and Market Forces may include shares not visible in existing quote and order data feeds or in its quote montage.

Additionally, Nasdaq proposes to modify both the fees for and data components of its Trading and Compliance Data Package. Using the Trading and Compliance Data Package, NASD member firms can currently obtain monthly compliance report cards, monthly summaries of trading volume statistics, and historical research reports. The Trading and Compliance Data Package release states that the purpose of Nasdaq's proposal is to "update" information to reflect changes in the data package that Nasdaq has already made, including removing a daily share volume report and adding OATS compliance report cards and new historical research reports. Nasdaq proposes to increase the fee for the "basic" level service of the enhanced Trading and Compliance Data Package product by 30% from \$100/month to \$130/month and for the "premium" level by 23% from \$130/month to \$160/month.

There is no information provided to help guide the Securities and Exchange Commission ("Commission") in determining whether the fees proposed for either the Market Analytics Package or the enhanced Trading and Compliance Data Package bear any relationship to costs, or whether the fees represent an equitable allocation of the costs associated with using exchange facilities. No data is provided as to what formula – if any – is relied upon in the computation of these fees. We believe that the Commission needs to perform a rigorous cost-based analysis in order to determine whether these fees are fair and reasonable. Without this information, the Commission lacks a legally sufficient foundation to approve the proposed fees.

Overall, we believe these rule proposals raise a number of significant policy issues and questions – not yet decided by the Commission – regarding consistency with the national market system requirements of the Securities Exchange Act of 1934. SIA members believe these proposals are only the tip of the iceberg, as other exchanges also may follow suit to extract more market data revenues from their so-called “proprietary data,” information which is a composite of member firms’ quote and order activities reported to the exchanges in their role as SRO. This trend of potentially unjustified (and possible windfall) fees places an ever-increasing price on access and transparency that burdens and disadvantages all investors, and particularly smaller entities and individual investors.

As the SIA has emphasized in a series of comment letters, with increasing consolidation in the industry as a result of mergers and the emergence of for-profit exchanges, the potential is great for conflicts of interest relating to how these self-regulatory organizations fulfill their primary purpose in the national market system to assure fairness to investors and other market participants, while at the same time seeking to generate ever more revenue for their shareholders.² Given these dramatic changes in our markets, SIA believes strongly that the Commission must carefully scrutinize these market data proposals to ensure that they further national market system goals – and not just profit motives – and require Nasdaq to justify the level, impact, and operation of its proposed per fees.

What is the proper role of a for-profit exchange in utilizing its members’ data, particularly where that SRO receives that data in its role as a government-sponsored monopoly? What is the cost basis for these fees? Should Nasdaq be utilizing regulatory data for commercial purposes and particularly where, as in this instance, the Commission has expressly prohibited the use of OATS data for commercial purposes in its order approving Nasdaq’s exchange registration? These and similar questions apply not just to the instant rule filings, but more broadly to all rule filings involving the sale of market data.

The SIA believes the rule filings are deficient in their present form. We urge the Commission to permit a more extensive review of these issues than is possible under the 21-day comment period. We propose a comment period of at least 90 days for all rule filings involving the sale of market data (unless it can be shown in a particular instance that a shorter time period is needed), at least until the Commission has addressed and provided clearer direction concerning the open issues surrounding the sale of market data by SROs. A 90-day comment period is needed to allow sufficient time for member firms to review the nature of the market data products that are the subject of rule filings as well

² *E.g.*, Comment Letter from the Securities Industry Association dated April 28, 2006, File No. SR-NYSE-2005-32 (NYSE OpenBook proposal); Comment letter from the Securities Industry Association dated July 18, 2005, File No. SR-NASD-2005-05 (TotalView enterprise license fee).

as to determine their need for the products. Such a 90-day period also may allow time for members to discuss the filings with the relevant SROs to better understand the proposals before commenting officially.

Thank you for your time and consideration of these views. If you have any questions regarding this letter, please contact Ann Vlcek, Vice President and Associate General Counsel, SIA, at 202-216-2000.

Respectfully submitted,

Gregory Babyak, Chairman
Market Data Subcommittee of the
SIA Technology and Regulation Committee

Christopher Gilkerson, Chairman
SIA Technology and Regulation Committee

cc: The Hon. Christopher Cox, Chairman
The Hon. Paul S. Atkins, Commissioner
The Hon. Cynthia A. Glassman, Commissioner
The Hon. Roel C. Campos, Commissioner
The Hon. Annette L. Nazareth, Commissioner
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