

March 27, 2008

Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File No. SR-NASD-2007-043: Response to Comments

Dear Ms. Morris:

On June 29, 2007, Financial Industry Regulatory Authority, Inc. or “FINRA” (f/k/a the National Association of Securities Dealers, Inc. (“NASD”)) filed with the Securities and Exchange Commission (the “SEC”) proposed rule change SR-NASD-2007-043 to increase to 100% the percentage of New York Stock Exchange (“Tape A”), American Stock Exchange (“Tape B”) and Nasdaq Exchange (“Tape C”) revenue shared with FINRA members reporting trades to the NASD/NSX Trade Reporting Facility (the “NASD/NSX TRF”)¹ (the “original filing”). On October 29, 2007, FINRA filed Amendment No. 1, which proposed to share 75%, rather than 100% as proposed in the original filing, of market data revenue with NASD/NSX TRF participants and revised the Self-Regulatory Organization’s Statement on Burden on Competition. On November 14, 2007, the SEC published for comment the proposed rule change, as modified by Amendment No. 1, in the Federal Register.² The comment period closed on December 5, 2007. The SEC received one comment letter in response to the Federal Register publication.³

None of the commenter’s arguments is germane to this proposed rule change. First, the commenter argues that the proposed market data rebate demonstrates that the market data fees levied on firms are excessive and have no reasonable basis. Second, the commenter

¹ Effective July 30, 2007, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation. Accordingly, the NASD/NSX TRF is now doing business as the FINRA/NSX TRF. FINRA will file a proposed rule change to reflect the formal name change of each FINRA Trade Reporting Facility in the Manual.

² See Securities Exchange Act Release No. 56752 (November 6, 2007), 72 FR 64099 (November 14, 2007) (notice of filing of SR-NASD-2007-043).

³ The SEC received a comment letter from Christopher Gilkerson and Gregory Babyak, Co-Chairs, Market Data Subcommittee of the Technology and Regulation Committee, Securities Industry and Financial Markets Association (“SIFMA”), dated December 5, 2007. This comment letter also was submitted in response to FINRA’s proposed rule change SR-NASD-2007-031.

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argues that the proposed market data rebate demonstrates the ability of self-regulatory organizations to allocate the costs of collecting and distributing market data to others. Third, the commenter argues that the proposed market data rebate demonstrates a lack of transparency regarding the costs of collecting and distributing the market data and the resulting revenues, and the commenter and other parties are unable to comment fully on the wisdom behind the proposed rule change due to this lack of transparency.

As the commenter points out, the reasonableness of market data fees and the purported lack of transparency regarding the cost of collecting the market data are at issue in the NetCoalition Petition. Approval of this proposed rule change does not require resolution of these issues. Additionally, with respect to the commenter's assertion that it cannot verify the wisdom of the proposed rule change, it is FINRA's view that the proposed rebate is reasonable for the reasons stated in the published rule filing. The commenter's assertion does not, in FINRA's view, refute the stated rationale for the proposed rebate and FINRA does not believe that the costs of collecting and distributing the market data – which costs are not set by FINRA – are necessarily determinative of the reasonableness of the rebate.

Finally, the comments relating to potential impacts on competition cite only to FINRA's filing proposing to increase the percentage of market data revenue shared with NASD/NYSE Trade Reporting Facility participants and therefore, need not be addressed in this response to comments.⁴

If you have any questions, please contact me at (202) 728-8190 or Stephanie Dumont at (202) 728-8176.

Very truly yours,



Lisa C. Horrigan

Associate General Counsel

⁴ See Securities Exchange Act Release No. 56754 (November 6, 2007), 72 FR 64101 (November 14, 2007) (notice of filing of SR-NASD-2007-031). On February 4, 2008, FINRA submitted its response to comments as Partial Amendment No. 3 to SR-NASD-2007-031.