



Philip M. Pinc
Vice President, Counsel

April 2, 2008

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: 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" or the "Commission") 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 (collectively, the "NASD/NSX TRF Proposal"), 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 (the "SIFMA Comment Letter").³ The SIFMA Comment Letter discusses objections relating to the proposed increased sharing of market

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.

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 was also submitted in response to the NASD/NYSE TRF Proposal (as defined below).

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rebates set forth in the NASD/NSX TRF Proposal and in a similar proposal by the NASD/NYSE Trade Reporting Facility⁴ (the "NASD/NYSE TRF Proposal"), which seeks to increase such trade reporting facility's market data rebate to 100%. On March 27, 2008, FINRA submitted a response (the "FINRA Response Letter")⁵ to the SIFMA Comment Letter.

The National Stock Exchange ("NSX") appreciates this opportunity to reply to the SIFMA Comment Letter.

NSX requests that the Commission approve the NASD/NSX TRF Proposal. While systemic reforms are needed in market data administration, given the current framework and economics, the 75% rebate set forth in the NASD/NSX TRF Proposal is consistent with the NSX policy of aggressively rebating market data revenues back to investors. Notwithstanding the foregoing, NSX would take this opportunity to reiterate its position, as previously publicly stated to the Commission in its letter dated February 27, 2007 (the "NSX NetCoalition Comment Letter"),⁶ that as a necessary part of its deliberations the Commission conduct a thorough, broad-based review of the securities market data structure and, based on such a review, consider significantly reforming the existing process of consolidating, disseminating, and charging investors for market data. NSX believes that until the market data fee structure is reformed, broker-dealers will be forced to purchase market data at a fixed and, we believe, arbitrary price.

In the SIFMA Comment Letter, SIFMA argues that under the existing market data rebate structure the proposed TRF market data rebates demonstrate that: (1) market data fees are not fair and reasonable; (2) market data costs and revenues are not transparent but, in fact, can and should be accurately allocated; and (3) the potential use of market data profits by certain exchanges to gain advantages in other businesses may result in unfair competition.

NSX generally agrees with SIFMA's comments. In particular, NSX concurs with SIFMA's observations with respect to the NASD/NYSE TRF Proposal to rebate 100% of market data revenue that:

"It appears that any potential short-term benefits from the rebates may be severely diminished by the long-term impact of less competition ... The possible result, intended or unintended, may drive smaller TRFs (such as the NSX) out of the TRF business, thus resulting in fewer TRF choices."

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).

⁵ The SEC received a response to the SIFMA Comment Letter from Lisa C. Horrigan, Associate General Counsel, FINRA, dated March 27, 2008.

⁶ Letter from Joseph Rizzello, Chief Executive Officer, National Stock Exchange, Inc., to the Commission dated February 27, 2007, commenting on SR-NYSEArca-2006-21.

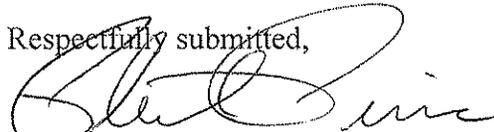
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Based on the foregoing and the arguments presented in the NSX NetCoalition Comment Letter, NSX urges the Commission to both (i) approve the NASD/NSX TRF Proposal and (ii) consider and adopt the proposals articulated in the NSX NetCoalition Comment Letter.⁷ 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 prompting a thorough industry wide discussion.

The first step in promoting such a discussion would be to publish the recommendations that were provided to the Commissioners in January, 2008. Those recommendations should be put out for a reasonable period of public comment prior to decisions being made by the Commission. For the public comment to be meaningful, data and related analysis relied upon by staff in reaching those recommendations should also be published.

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,



Philip M. Pinc
Vice President, Counsel
National Stock Exchange, Inc.

cc: Chairman Christopher Cox
Commissioner Paul S. Atkins
Commissioner Kathleen L. Casey
Erik R. Sirri, Director, Division of Trading and Markets

⁷ See page 3 of the NSX NetCoalition Comment Letter, wherein NSX recommended that the Commission consider and adopt the following policies:

- (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.