NASDAQ®

THE NASDAQ STOCK MARKET
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June 8, 2006

Via e-mail: rule-comments@sec.gov

Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F. Street NE
Washington, D.C. 20549

Re: Third Response to Comments - SR-NASDAQ-2006-001

Dear Ms. Morris:

Alas, Bloomberg Tradebook is predictable. Over the years that Bloomberg has participated in Nasdaq, Nasdaq has filed many proposals to automate and improve its market. With each proposal, Bloomberg has predicted that approval of said proposal would force Bloomberg out of Nasdaq and out of business. Voicing dire predictions, Bloomberg has opposed Nasdaq's Exchange Registration, the Nasdaq Official Opening Price, the Nasdaq Opening Cross, the Nasdaq Official Closing Price, the Nasdaq Closing Cross, the Nasdaq Auto-Ex Order, Nasdaq SuperMontage and many others. The Commission has approved each of those proposals, rejecting Bloomberg's arguments again and again. Yet, despite their predicitons, Bloomberg has overcome every strawman in its way and continued to participate in Nasdaq.

Now, Bloomberg's predictability has become its Achilles heel. While the industry is evolving at a startling pace, Bloomberg is unwilling to adapt to increased competitiveness and efficiencies that both the securities industry and regulators are demanding. Bloomberg is unable to see "viable" options for its business model, not because they don't exist, but because Bloomberg resists evolving along with the industry. Where others, including Nasdaq's own INET ECN, see quoting opportunity in the NASD ADF, the National Stock Exchange, and the Boston Stock Exchange, Bloomberg sees only obstacles. Thus, Nasdaq becomes Bloomberg's only viable option, and Nasdaq exists solely to serve and preserve Bloomberg's business. Bloomberg has a lonely predicament: it is the only opponent of Single Book that is not directly or indirectly participating in another market. The other parties that commented -- BATS, DirectEdge, Track and OnTrade -- are all quoting in alternative venues: BATS in NSX and the other three in the NASD ADF.[1]

In reality, Bloomberg will not go out of business; it will either continue participating in Nasdaq or it will find an alternative venue for its quotes. Bloomberg is already technologically capable of participating in Nasdaq via automatic execution. For example, Bloomberg currently participates in Nasdaq's Opening and Closing Crosses via automatic execution while still managing its "double execution" risk. During the first week of May 2006, Bloomberg executed almost two million shares via automatic executions in the Opening and Closing Crosses. Like numerous other agency brokers that participate in Nasdaq via automatic execution, Bloomberg participates in the Opening and Closing Crosses by waiting for a "cancel" message from Nasdaq before executing an internal match.[2] If Bloomberg can accept automatic executions in the Crosses, it can do so throughout the trading day.

Bloomberg is also technologically capable of quoting in the NASD ADF within a matter of days. In numerous conversations with Bloomberg technologists, Bloomberg has consistently represented to Nasdaq that moving its quotes to the ADF is a project that can be completed in days and not weeks or months. This is consistent with the speed with which BATS moved its quotes from Nasdaq to the NASD ADF.

Rather than take either of these positive steps, Bloomberg continues to do what it has done for years: oppose any change to Nasdaq and insist on maintaining its business model exactly as it has existed for years. Bloomberg's comment at page 5 amply demonstrates this point. In one paragraph, Bloomberg simultaneously argues that (1) Nasdaq cannot eliminate order delivery functionality, (2) Nasdaq cannot assess fees for order deliveries to the ECNs that benefit from order delivery, and (3) it cannot set a uniform fee schedule that puts order delivery participants and automatic execution participants on a level playing field. It appears that Nasdaq can make no change to order delivery functionality or fees that would not be, in Bloomberg's view, inconsistent with Bloomberg's business model, and which would, consequently, be anti-competitive or discriminatory.

According to Bloomberg, it has no viable alternatives to Nasdaq but, in reality, any venue that does not adapt to Bloomberg's existing business model would be deemed to be not a "viable" alternative for Bloomberg. The ADF is not viable because it would require Bloomberg to establish connectivity to other ADF participants. Bloomberg's complaint must be considered a pretext because Bloomberg is expert at establishing connectivity with its individual subscribers; indeed its current business model is based on it ability to establish direct connectivity. Other ECNs have established the same ADF connectivity Bloomberg purports to spurn. Bloomberg, speaking of DirectEdge, notes that its value to Knight Trading, "derived from the fact that it had spent years

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1 DirectEdge, Track and BATS filed half-hearted "me too" comments echoing Bloomberg's comments on May 5, 2006. Nasdaq has fully responded to and rebutted OnTrade's untimely comment, which was directed more at the shortcomings of the NASD ADF and of Regulation NMS than at Nasdaq's Single Book proposal.

2 Bloomberg's technical staff has confirmed to Nasdaq that Bloomberg has already programmed this feature into its system to participate in Nasdaq via automatic execution.

building connectivity both to the ADF and with the Street." Having failed to invest in connectivity like DirectEdge, Bloomberg cannot now complain that the ADF is not a viable alternative.

If Bloomberg did choose to quote in the NASD ADF, Nasdaq will route orders to Bloomberg just as it routes orders today to other NASD ADF participants, and to the NYSE, Amex, Arca, NSX, CHX and others. Order routing is simply another form of order delivery. Like Bloomberg itself, Nasdaq/INET is a sophisticated order router. Order delivery and routing function are virtually identical, the only difference being whether Bloomberg's quote is represented within Nasdaq's proprietary system (in which case Nasdaq will reach Bloomberg via order delivery) or it is represented in the consolidated data stream (in which case Nasdaq will reach Bloomberg via routing).

Bloomberg also attacks the NSX because it offers attribution to only one participant.[3] Bloomberg calls the NSX "a lifeboat with one seat" and then complains that NSX is not a viable option because BATS has already taken that seat.[4] Yet again, Bloomberg is just wrong. There are currently two ECNs operating within the NSX, BATS and INET, Nasdaq's ECN. These two ECNs seem to be cohabitating in NSX with little disruption. In Bloomberg's view, its business model and that of the other ECNs is not "viable" unless each ECN has its own personal exchange for quoting. Rather than accept any limitation of its business model or any responsibility for its own competitive advances, Bloomberg demands that Nasdaq stand still until another venue bends to Bloomberg's wishes.

Nasdaq does not have the luxury of standing still. It is engaged on every front in a fiercely competitive industry. Nasdaq faces competition for listings both in the United States and abroad, in Europe and Asia particularly. It faces existing competition for executions by seasoned exchanges.[5] It faces potential competition for executions from new entrants that have almost no barriers to entry.

Recognizing that Nasdaq's future success depends on its ability to evolve and compete, Nasdaq spent close to $1 billion in 2005 to acquire from Reuters the state-of-the-art execution and routing platform that forms the backbone of the Single Book. The Single Book is lightning fast and will satisfy, for now, investors' accelerating appetite for faster executions and increased certainty. It will transform Nasdaq into a strict price-time priority venue, a change in Nasdaq's market structure that the Commission has long advocated as a means of increasing order interaction, reducing order isolation, and reducing internalization. It will promote competition by allowing

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[3] Nasdaq has for years criticized this very aspect of NSX's operation as giving rise to the "print shop" mentality of certain regional exchanges. *See Nasdaq Petition For Commission Action Concerning the Trading of Nasdaq-Listed Securities, dated April 11, 2003*. It would be ironic were Nasdaq required to delay an improvement to its already-superior market structure to permit the Commission to addresses a well-known deficiency at the NSX.

[4] It is unclear why BATS rather than Bloomberg became the NSX attributed participant. It could be that Bloomberg was invited to join and refused. It could be that BATS was a quicker, nimbler competitor. It could be that Bloomberg's behavior as a Nasdaq participant makes other firms and venues wary of partnering with Bloomberg. Whatever the reason, Nasdaq respectfully requests that the Commission reject Bloomberg's demands to freeze Nasdaq's existing market structure before addressing Bloomberg's demands to re-shape the NSX and NASD ADF.

[5] The sooner Nasdaq can launch the Single Book, the sooner it can stop sending INET quotations to the NSX. With its volume growing rapidly (28 percent market share currently), INET is now consuming almost all NSX capacity and is threatening to overburden NSX's systems.

Nasdaq to increase efficiency, decrease overall trading costs, and provide better service to market participants. Finally, Single Book will comply with the Regulation NMS Access and Order Protection Rules to prevent locked and crossed markets and trade throughs.

On the other side of the balancing act, as Bloomberg puts it, is the impact of the Single Book proposal on Bloomberg, the sole commentor that is not participating in another trading venue. Bloomberg's only claim of burden on competition is that requiring all Nasdaq participants to accept automatic executions will "burden competition for order flow in Nasdaq-listed securities." The fact is that Bloomberg has little or no impact on Nasdaq order flow generally. Bloomberg's total reported activity in Nasdaq stocks – including orders delivered to Bloomberg and orders executed within Bloomberg's system – accounted for just 1.6 percent of consolidated trades and 1.4 percent of consolidated volume.[6] For the first week of May 2006, orders that Nasdaq delivered to Bloomberg and that Bloomberg actually executed accounted for just nine-tenths of one percent of consolidated trades and just seven-tenths of one percent of consolidated volume in Nasdaq stocks.

Bloomberg does have an impact on Nasdaq's competitiveness, and that impact is negative. For the first week of May 2006, during the critical trading period prior to 9:30:15a.m., Bloomberg's mean response time to delivered orders is over 5 seconds per order.[7] This harms both the investors whose orders are being delivered and the orders with which they would match if Bloomberg could execute them in a timely fashion. Bloomberg's reference to alleged quote latency on Nasdaq is a complete and utter non sequitor. Since Nasdaq measures ECN response time from the time an order leaves Nasdaq systems until the time a response is received, there is no relationship between ECN response time and quote latency. Moreover, Bloomberg is not the worst offender; for that same period in May, two other ECNs that filed comments have mean response times exceeding 7 and 16 seconds per order. Nasdaq will share with the Commission the backup for these statistics upon request.

Bloomberg claims that requiring it to accept automatic executions is discriminatory. Today, the vast majority of Nasdaq participants are required to accept automatic executions, both market makers and order entry firms. Only a select few ECNs are offered order delivery, as a legacy function of Nasdaq's SelectNet system from the mid-1990s. Bloomberg does not explain how requiring all market participants to use identical automatic execution functionality can be considered discriminatory. What Bloomberg really seeks is to maintain its current privileged position *vis a vis* other Nasdaq market participants that are required to accept automatic executions.

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6 Bloomberg's claim that it represents 15 percent of the Nasdaq market is patently misleading. Bloomberg inflate its market share by using as its denominator only the activity in SuperMontage, which represents under 12 percent of total Nasdaq trading. Bloomberg also neglects to mention that just over half of its total volume is attributable to orders delivered by Nasdaq. In other words, even assuming that SuperMontage activity were the total universe of Nasdaq trading and not just one-tenth of it, Bloomberg's order delivery executions still represent just a small fraction of SuperMontage executions.

7 Bloomberg questions the seriousness of Nasdaq's need for speed because Nasdaq permits ECNs a 5-second response window for order delivery participants. This is ironic given that Mr. Blanc, Bloomberg's counsel, represented Brut ECN (prior to Nasdaq acquisition) and threatened suit against Nasdaq when Nasdaq tried to enforce its 5 second response time. Mr. Blanc claimed, in that situation, that Nasdaq, by enforcing the 5-second rule was improperly "denying access" and violating SEC rules.

Bloomberg attempts to use this advantage to attract order flow and involuntarily to capture access fees from investors whose orders Nasdaq delivers to Bloomberg.

Bloomberg's intentions are clear: it wants a delay at any cost while it negotiates a commercial arrangement with another trading venue. The notion that the Exchange Act of 1934 grants Bloomberg a transition period of any length is completely unsupported by any statutory language, any legal precedent,[8] or any meaningful analysis.[9] Putting aside Bloomberg's hyperbole, the facts here are simple: Nasdaq filed this proposal on February 7, 2006; the Commission published it in the *Federal Register* on April 14, 2006, and the comment period ended on May 5, 2006.[10] The Commission has not initiated a disapproval proceeding, there is no basis for doing so, and therefore Bloomberg is not now nor will it be entitled to a 180-day period of delay as it implies.[11] Nasdaq is neither speeding up nor slowing down its plans, but simply following the statutory notice and comment process prescribed by the Exchange Act and the Administrative Procedures Act.

Conclusion

Nasdaq's Single Book proposal is consistent with the Exchange Act and ripe for approval. It also offers tremendous benefits to public investors, including increased opportunities for execution in price/time priority, increased order interaction, faster execution, and decreased overall trading costs. The Single Book, like the NYSE Hybrid and other new SRO trading systems, represents the next step in the evolution and improvement of the Nasdaq stock market and will spur new competition to provide superior service to the securities industry. Nasdaq urges the Commission to approve it immediately.

Sincerely,

Jeffrey S. Davis /lls

Jeffrey S. Davis
Senior Associate General Counsel

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8 Bloomberg has presented no Commission or court precedent establishing that the need for a so-called transition period is a statutory basis to extend the 35-day period for Commission action set forth in Section 19(b)(xx) or to disapprove a rule filing under Section 19(b)(2(B).

9 How, for example, would the Commission fashion a standard for setting such statutory delays? What level of proof would be required to earn a delay; an affidavit or just a comment letter? Would the delay be a standard one-year for all trading systems? Would it be adjusted based on the trading volume of the market or of the participant, by the technological capability of the participant, by the impact on investors, by the profit or loss of the market or the participant? Would the Commission conduct a cost-benefits analysis? Like Bloomberg's request for delay, these questions are all just red herrings.

10 Nasdaq notes, yet again, that Bloomberg's comment was filed long after the official notice and comment period for this proposal expired. Under the Commission's own rules and the Administrative Procedures Act, it is improper for that letter to receive consideration or to be included in the official record in this matter.

11 Were Bloomberg entitled to a 180-day transition period, that period would expire on August 2, 2006, 180 days following submission of the filing.