

February 12, 2007

**Via Electronic Mail ([rule-comments@SEC.gov](mailto:rule-comments@SEC.gov))**

U.S. Securities and Exchange Commission  
100 F Street, N.E.  
Washington, DC 20549-1090

Attention: Nancy M. Morris, Secretary

**Re: File Nos. SR-NASDAQ-2006-053, and SR-NASDAQ-2006-013**

Dear Ms. Morris

The Market Data Subcommittee of the Securities Industry and Financial Markets Association (“SIFMA”)<sup>1</sup> Technology and Regulation Committee appreciates the opportunity to comment on SR-NASDAQ-2006-053. In our view, Nasdaq and the Securities and Exchange Commission (“SEC” or “Commission”) must consider the **143 comment letters** in the previously-filed rule proposal, SR-NASDAQ-2006-013, which raises the same statutory and policy issues and covers the identical proposed changes to INET and TotalView as SR-NASDAQ-2006-053.

Nasdaq has not responded to those 143 comments, including some 140 which appear to have been submitted by individual investors who rely on the INET book data to make investment decisions and who may have that data taken away from them because they cannot afford it as part of TotalView. There was no clear notice provided by Nasdaq or the SEC that the prior rule filing was being withdrawn or the reasons for it. In fact, the more recent Nasdaq filing does not even acknowledge the obvious relationship between the two proposals. These procedural maneuvers, when taken together, do not comply with the open government and public notice and comment purposes of Section 19(b) of the Securities Exchange Act of 1934.

Moreover, as evidenced by 143 comment letters, this matter raises the same pressing market data issues presented *In the Matter of NetCoalition*, File No. SR-NYSEArca-2006-21. We incorporate by reference the SIFMA comment letter in that matter dated January 17, 2007, including our request to impose a moratorium on approval of this and other market data rule filings until the Commission itself is able to address fundamental legal and policy issues. In that letter we urged the Commission to address the following issues: the conflicts of interest of for-profit exchanges; the lack of a meaningful standard to assess the fairness and reasonableness of fees for single-exchange market data products; and the impacts on competition, efficiency, and broker-dealer obligations arising from the speed and content disparity between the slower consolidated quote required by Commission rules and exchange products such as Nasdaq’s TotalView – now incorporating the previously free INET depth of book data. Until these issues

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<sup>1</sup> The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA’s mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public’s trust and confidence in the markets and the industry. SIFMA works to represent its members’ interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

are addressed by the Commission, there is insufficient basis for the staff to approve SR-NASDAQ-2006-053 by delegated authority, especially in light of the 143 comment letters.

As we said in our first letter on SR-NASDAQ-2006-013, we do appreciate Nasdaq's approach of aggregating data feeds and attempting to minimize administrative burdens on firms and their employees and clients. We also understand that Nasdaq submitted the instant filing out of a laudable concern that our members be aware of the fee change pertaining to former INET book recipients, in light of the fact that Nasdaq no longer believes this rule change requires amending its rulebook text.<sup>2</sup> We also agree with Nasdaq on the importance of its TotalView data in terms of making our markets transparent. But because all investors and the professionals that serve them should be entitled to receive and use this data within a framework that promotes equal and widespread access to the information, we ask that the SEC not approve this filing until it undertakes the comprehensive review SIFMA members have long requested.

In this filing, concerning integration of INET data into TotalView, Nasdaq is now claiming that the SEC - by default or implication - previously approved: (1) the integration of the INET data into TotalView, **and** (2) Nasdaq's decision to take away free INET book data, **and** (3) its plan to begin charging former INET data recipients the TotalView fee. We see nothing in the SEC's orders of approval pertaining to Nasdaq's trading platform and trading systems that call the public's attention to these decisions. Further, these orders of approval do not analyze these issues nor expressly acknowledge the resulting impacts on INET depth of book data fees and, therefore, its accessibility.

Nasdaq misses the point when it says that it "is simply proposing to assess [the TotalView] fee to a group of new users." Those impacted are not "new users" – they are professionals and investors who have used the INET depth of book data for years to make informed trading decisions but who will now be required to buy all the Nasdaq TotalView data they did not want or need, or cannot afford. This has the same effect as tying one product to another would. Nasdaq fails to address this competitive issue or the impact on these professionals and investors.

As stated in our previous comment letter on the integration of INET book data into TotalView in SR-NASDAQ-2006-013, there is no factual information in this filing to support the summary conclusion that the TotalView fee – especially as applied to former INET data book recipients – is "an equitable allocation of costs and is "fair and reasonable" as required under the Exchange Act." Nasdaq included no data showing the costs of aggregating and disseminating INET book data. Finally, Nasdaq is asking for approval of the imposition of this new fee to former INET book recipients as of February 1, 2007. Approval of this rule change post-February 1 would impose retroactive fees on investors inconsistent with any "fair and reasonable" standard.

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<sup>2</sup> Although it is not amending the text of a rule, we agree with Nasdaq's implicit conclusion that the proposed changes nonetheless constitute a rule change as a "policy, practice or interpretation" within the meaning of Exchange Act Section 3(a)(27).

Thank you for your time and consideration of these views. If you have any questions regarding this letter, please contact Melissa MacGregor, Assistant Vice President and Assistant General Counsel, SIFMA, at 202-434-8447.

Respectfully submitted,

Christopher Gilkerson and Gregory Babyak

Co-Chairs, Market Data Subcommittee of the  
SIFMA Technology and Regulation Committee

cc: The Hon. Christopher Cox, Chairman  
The Hon. Paul S. Atkins, Commissioner  
The Hon. Roel C. Campos, Commissioner  
The Hon. Annette L. Nazareth, Commissioner  
The Hon. Kathleen L. Casey, Commissioner  
Dr. Erik R. Sirri, Director Division of Market Regulation  
Robert L.D. Colby, Deputy Director Division of Market Regulation  
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