

March 7, 2007

Nancy M. Morris, Secretary
Securities and Exchange Commission
Station Place
100 F Street, NE
Washington, DC 20549-1090.

Re: File Number SR-NASDAQ-2006-060

Dear Ms. Morris:

I am writing on behalf of eSignal, a division of Interactive Date Corporation, which specializes in the delivery of real-time market information and the development of advanced trading workstations. We are writing to comment on the proposal by NASDAQ Stock Market LLC (“the Exchange”) to create the “NASDAQ Last Sale for NASDAQ” and “NASDAQ Last Sale for NYSE/Amex” data feeds (the “data feeds”). These data feeds will contain the last sale price for U.S. equities within the NASDAQ/NASD Trade Reporting Facility. While we agree that it is important and in the public’s best interest to open up access of real-time prices from the Exchange, we are concerned that the proposal fails to meet the Exchange’s obligations to provide such data on fair and reasonable terms that are not unreasonably discriminatory.

The Exchange has proposed a number of alternative pricing models. For the reasons set forth below, we believe these models unreasonably discriminate against smaller distributors and do not provide fair and reasonable terms that reflect the Exchange’s actual costs of providing the data.

The Proposal Favors Large Firms

The proposed fee structure provides an insurmountable advantage to larger web distributors of data. Thousands of financial websites compete for the attention of investors, and many of the websites are seeking to generate advertising revenue through increased page views. The most prominent of these financial websites are well-known web portals like Yahoo! and Microsoft’s MSN, which boast millions of users each month. These large financial websites will consistently distribute enough quotations to receive the Exchange’s proposed capped rates for the data feeds. Because their cost for real-time quotations is capped under the proposal, these websites will not have an incentive to limit the number of quotations they provide, yet each additional page of real-time quotes may represent additional advertising revenue. As a result, they will seek to maximize their revenue by delivering as many real-time quotations as possible, thereby consuming real-time quotation resources from the Exchange that are greatly

disproportionate to the amount the Exchange receives in fees. In contrast, small and mid-sized websites without the volume necessary to reach the fee cap will face a Hobson's choice. They may either compete by offering the exceedingly high-cost data feeds available under the proposal, or alternatively, they can effectively fail to compete at all by displaying only delayed quotations. Market pressures will force financial websites of all sizes to carry real-time data. If other exchanges follow the lead set by this proposal, the cost of providing real-time quotations could cost millions of dollars per year for websites of all sizes, giving the competitive advantage to the larger web portals. We believe the Exchange should seek to provide a level playing field for both large and small websites to offer this service. Allowing small and mid-size firms to compete on fair terms in the business of distributing quotations will increase competition in the market and improve service levels for investors.

Unscrupulous Firms May Exploit the Pricing Structure

At the other end of the spectrum are small websites, which often lack meaningful budgets to pay for content. The readily-available quotes from the web portals will undoubtedly present an irresistible opportunity for some unscrupulous smaller competitors to obtain unlimited free real-time quotes and pass them on to their readers. As a technical matter, acquiring and reformatting quotes from websites is simple, and as a result, many outside software vendors provide proprietary software that relies on data from Yahoo! and similar web portals. Some financial services firms rely on these programs for critical tasks like pricing portfolios and evaluating investments. Small firms which sought to take real-time quotes from larger web portals would be in violation of the terms of use for the Exchange and the portal web sites. Through their respective terms of use, both the Exchange and the portal websites impose legal barriers on redistributing the real-time data feed, but notwithstanding these legal barriers, many independent sites will be tempted use web portals as their source of real-time quotations. The unscrupulous websites will effectively turn Yahoo! and its competitors into the "Napster" of real-time quotes, *i.e.*, a never-ending source of free content to be exploited without regard to the intellectual property rights of the owner. The large web portals providing the data will have zero marginal costs for providing the additional quotes, and the additional web page views they receive will help to drive their advertising revenue. As a result, the large web portals are unlikely to actively discourage smaller sites from pilfering the real-time data this way.

Piracy of real-time data by unscrupulous firms is more than a theoretical possibility. Many data piracy firms are actively redistributing misappropriated data from stock exchanges around the world. These firms often operate offshore where protections of intellectual property rights are lower, where access to legal representation is limited, and where the exchanges' enforcement efforts have thus far been ineffective.¹

¹ See, e.g., Chi-Chi Zhang & Max Bowie, *Data Piracy Remains Asia Concern*, Inside Market Data, Jan. 8, 2007, at 1.

Ultimately, the Exchange will bear the cost of these unscrupulous websites who simply redistribute quotes from larger sites, and the Exchange's capped pricing policy means that it will be unable to recoup its costs from the web portals. Furthermore, by effectively encouraging the redistribution of real-time quotes through its capped pricing structure, the Exchange risks permitting these smaller firms to distribute "real-time data" that is compromised in both timeliness and quality.

Discount for Dual Distribution Through the Web and Television is Unfair

The Exchange's proposal also contains a discount for distributors that provide real-time quotations via television and the internet. This effectively subsidizes those providers that have both television stations and financial portals. There are only two or three market data providers that span across television and internet delivery. There is no basis for providing an additional discount to these distributors merely because they operate in two media.

Proposed Data Feed Pricing is Unfair to Brokers and Market Data Vendors

NASDAQ brokers and market data vendors who provide real time data to customers must do so on a per-user basis. The mandatory per-user pricing costs larger brokers and market data vendors millions of dollars annually in data fees to the Exchange. In contrast, the Exchange proposes to allow web portals access to substantially the same real-time data at a capped fee that is a fraction of what brokers and market data vendors pay. For their greater per-user fees, the NASDAQ brokers and market data vendors receive certain information, including the bid and ask quotations, that are not included in the proposed data feeds. However, this small disparity in the data provided does not justify the much larger disparity in prices.

Unique User Pricing Does Not Reflect the Exchange's Actual Costs

The Exchange's proposal also creates a unique user pricing model based on the number of customers with access to the data feed, but without regard to the number of users that use the data feed. Some distributors may obtain content from dozens of exchanges, and therefore provide users with access to multiple data streams. In many cases, users with access to multiple data streams may not use the Exchange's data feed. Under the Exchange's proposed unique user model, distributors will be required to pay fees for users that do not use the Exchange's data feed and which therefore do not impose any costs on the Exchange.

For the reasons discussed above, we believe that the Exchange should reconsider the proposed pricing policies for the data feeds. We thank you for considering all sides of this issue.

Sincerely,

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Chuck Thompson, President
eSignal, a division of Interactive Data Corporation