



THE NASDAQ STOCK MARKET
8800 BLACKWELL ROAD
ROCKVILLE, MD 20850

JEFFREY S. DAVIS
VICE PRESIDENT &
DEPUTY GENERAL COUNSEL
P: (301) 978-8484 F: (301) 978-8472
E: jeffrey.davis@nasdaq.com

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Via email to rule-comments@sec.gov

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303

**Re: Response to Comment Letters on SR-NASDAQ-2006-060,
NASDAQ Last Sale Filing**

Dear Secretary Morris:

On December 19, 2006, The NASDAQ Stock Market LLC (“NASDAQ”) submitted to the Commission the above-captioned rule proposal to establish the NASDAQ Last Sale, a NASDAQ-only market data service permitting vendors to redistribute real-time last sale prices of transactions executed on NASDAQ (“NASDAQ Last Sale Filing”).¹ The proposal would establish two separate data feeds with two separate fee structures, one for last sale data regarding NASDAQ-listed securities and the second for last sale data regarding securities listed on other exchanges. NASDAQ proposed to establish one set of user fees for vendors that employ password/user name security systems and a separate fee schedule for vendors that do not employ such a system, with both fee schedules capped at \$100,000 per month for last sale data for NASDAQ-listed securities and at \$50,000 per month for last sale data for securities listed on other exchanges. The proposed fee schedule will allow large internet service providers and media outlets, such as Google and Yahoo, to provide millions of investors with real-time prices of transactions that take place on the Exchange, at no charge to investors and with no administrative overhead.²

¹ NASDAQ amended the proposal on January 26, 2007.

² NASDAQ has signed distribution agreements with several vendors that are waiting to provide the NASDAQ Last Sale data feeds to investors. Based upon agreements currently in place, NASDAQ projects revenue of \$7 to \$10 million dollars for fiscal year 2008, if the fee is approved by January 1, 2008.

The Commission issued a Notice of Filing of the NASDAQ Last Sale Filing on February 8, 2007, and received three comment letters.³ One of the comment letters, from Google, Inc., supported the proposal:

We would like to express our strong support for the NYSE and Nasdaq proposals to offer companies like ours the flexibility to publish real-time last sale information for a flat monthly fee. Google is enthusiastic about both the Real-Time Trade Prices and the Last Sale Data Feeds proposals and the opportunity to give more of our users access to live financial information online. Through our Google Finance product, we plan to make this data available at no cost to the millions of people visiting our website as soon as these proposals receive the Commission's approval.⁴

One comment letter opposed the proposal on the grounds that it discriminates against all but the largest internet distributors. The commentor is correct that NASDAQ designed the NASDAQ Last Sale product in response to the requests of large distributors who want a flat fee for unlimited distribution and whose business model makes burdensome the procurement of end-user contracts and reports of data usage. In recognition of the interests of smaller vendors, NASDAQ did not simply offer a flat fee, as the proposal implies, but a tiered fee schedule that permits smaller vendors to pay smaller amounts whether they employ password/user name systems or not. If smaller distributors believe that a third fee schedule would better suit their business models, NASDAQ welcomes their input but has not received it yet. In addition, NASDAQ notes that distributors small and large will continue to have the ability to provide consolidated last sale prices on a real-time basis for a low monthly fee (or, depending upon their business model, at no charge) or to provide delayed data at no charge.

NASDAQ appreciates and shares the commentor's concerns about data piracy and its effect on market data distribution. NASDAQ does not agree, however, that its proposed fee schedule for the NASDAQ Last Sale product will have any effect on the actions of unscrupulous market data pirates. NASDAQ does not understand and the commentor does not explain why the possibility of data piracy by unscrupulous vendors provides a legitimate basis for opposing NASDAQ's proposal. Finally, NASDAQ notes that it already has an active audit program that attempts to the greatest extent possible to protect the integrity of NASDAQ's data and brand.

Finally, NASDAQ notes that the commentor fundamentally misunderstands two aspects of the proposal. First, the commentor assumes incorrectly that NASDAQ Last Sale data feeds will be unavailable to broker-dealers. Second, the commentor states incorrectly that the proposal's "unique user pricing model" will force distributors to pay

³ Securities Exchange Act Release No. 55255 (Feb. 8, 2007).

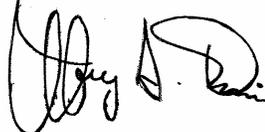
⁴ Letter dated June 12, 2007 from Alan Davidson, Senior Policy Counsel, Google, Inc.

fees for users that have access to the feed even if they don't use it. In fact, NASDAQ's proposal was specifically designed to offer an alternative that avoids that possibility. Vendors have the choice to use a password/user name system and can pay for only those users that access the NASDAQ Last Sale data rather than pay for a set of users that has access but may not use the data.

The third and final comment letter came from an industry trade association that has been a critic of new and innovative market data products and fees that the securities markets have proposed recently.⁵ That comment letter restates arguments that the trade association has raised in earlier comment letters, especially a comment letter that it submitted in opposition to a proposed rule change that NYSE Arca, LLC submitted to the Commission to establish fees for its Arca Book depth-of-book product (the "Arca Book Fees").⁶ Those comments bear on the Arca Book Fees and do not bear on the NASDAQ Last Sale Filing. NASDAQ has previously responded to the comments raised in that matter and hereby incorporates the Exchange's previous responses by reference.

I hope this information is useful to the Commission in its assessment of NASDAQ's Last Sale Data rule proposal. NASDAQ notes that on June 26, 2007, Chairman Cox testified before the House Financial Services Committee that the Commission was working in "real time" on an order to reject the NetCoalition Petition and approve numerous exchange proposals to create or price proprietary market data products. Chairman Cox repeated that testimony before the Senate Banking Committee on July 31, stating that the Commission would reject the NetCoalition Petition and approve pending market data products in recognition of the "competitive landscape" for proprietary data products. NASDAQ eagerly awaits that approval order because we believe that providing information broadly, fairly, and competitively is in the best interest of investors, the capital formation process and the US capital markets.

Sincerely yours,



Jeffrey S. Davis
Vice President and
Deputy General Counsel

⁵ Letter dated March 7, 2007, from Christopher Gilkerson and Gregory Babyak, Co-Chairs, Market Data Subcommittee of the SIFMA Technology and Regulation Committee, Securities Industry and Financial Markets Association.

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