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September 11, 2008

**Via Electronic Delivery**

Ms. Florence E. Harmon  
Office of the Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, D.C. 20549-1090

Re: File No. SR-NASDAQ-2008-033

Dear Ms. Harmon:

We write to comment on the above-referenced rule proposal filed by the NASDAQ Stock Market LLC ("NASDAQ"). We believe that the enhanced ability for broker-dealers to pass along transaction fees associated with "step-out" transactions may raise issues regarding confirmation disclosure under SEC rule 10b-10 and we ask that the Commission provide guidance regarding the application of rule 10b-10 to transaction fees that are passed along to customers of a broker-dealer.

NASDAQ proposes to amend rule 7038 to, among other things, permit a member broker-dealer to submit a non-tape, clearing-only submission to transfer a position, along with the obligation to pay a Sales Fee or similar fee, to another member broker-dealer without requiring that the two members be parties to an agreement authorizing the transferring party to enter into locked-in transactions on behalf of the transferee. NASDAQ also proposes to adopt rule 7043 to permit NASDAQ members to transfer a transaction fee "charged by one member to another member" where a written agreement exists between such members to submit fee-inclusive clearing reports.

We understand that some industry members view NASDAQ's proposal as a vehicle to allow a broker-dealer (the Executing BD) who effects a securities transaction at the request of an investment manager on an omnibus basis and then "steps-out" the transaction to another broker-dealer (the Settling BD) for clearance and settlement to be compensated for its execution services through a "transaction fee" added in the clearing process pursuant to proposed rule 7043.<sup>1</sup> To the

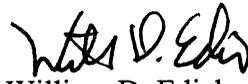
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<sup>1</sup> For example, an adviser to a "wrap-fee" program may determine that it would be consistent with the adviser's best execution responsibilities to execute a transaction with a broker-dealer other than the broker-dealer sponsor of the wrap program. This might occur where an adviser believes that the outside broker-dealer has special skills with respect to the securities involved in the transaction or where the adviser determines that a "bunched" order involving wrap and non-wrap accounts may involve less impact on execution price. Although an executing broker-dealer may determine to execute this type of transaction without compensation as an accommodation to the adviser, executing brokers are increasingly seeking to be compensated for their services in effecting such transactions.

extent that the transaction fee is passed along to the investment manager's managed account, it may, under some circumstances, be required to be disclosed to the customer pursuant to rule 10b-10(a)(2). Because the Settling BD has assumed the responsibility for clearing and settling the transaction, and because the mechanism provided in proposed Rule 7043 would provide the Settling BD all necessary information regarding the transaction fee charged by the Executing BD relative to the transaction, we believe that the Settling BD, and not the Executing BD, would be required to issue a confirmation that discloses the transaction fee (and any other information required under rule 10b-10) to the customer. We respectfully request that the Commission concur with our view, or otherwise address the disclosure issues related to transaction fees charged by executing brokers in "step-out" transactions, in the adopting release to the NASDAQ proposal.

We would be pleased to answer any inquiry that the SEC or its staff may have regarding our comments. Please call Lee A. Pickard or William D. Edick at 202-223-4418 if you have any questions.

Sincerely,



William D. Edick

cc: Dr. Erik R. Sirri, Director  
Mr. Robert L.D. Colby, Deputy Director  
Division of Trading and Markets