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Ms. Elizabeth Murphy
Secretary
US Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Re: SR-NASDAQ-2008-102, Exchange Act Release No. 59244

Dear Ms. Murphy:

Like Nero fiddling in Rome, SIFMA shifts its attention from the crisis on Wall Street to a NASDAQ proposal that, by SIFMA's own admission, offers investors market data at a "cheaper price and a speed advantage" over currently available market data. NASDAQ proposes to offer "NASDAQ Basic", a new market data product that contains only NASDAQ's best bid and offer quotations and that complements NASDAQ's highly-successful Last Sale product. SIFMA's objection is inexplicable because NASDAQ Basic will benefit public investors and cut costs for struggling SIFMA members.

SIFMA claims that it is improper for NASDAQ to apply the "fair and reasonable test" set forth in the SEC order rejecting the NetCoalition Petition because SIFMA is seeking appellate review of that order.¹ SIFMA's objection fails as a matter of law because the Approval Order is a valid agency action unless and until the appeals court issues a stay pending appeal or overturns the order. SIFMA is simply grandstanding.

SIFMA's second, equally-invalid objection is that SEC rules still require SIFMA members to purchase consolidated market data for certain trading and routing decisions and therefore NASDAQ Basic is not a complete substitute for consolidated data. This argument also fails as a matter of law because the SEC rules are valid agency rules and not within NASDAQ's control. NASDAQ notes that when the SEC pared the Display Rule to trading and routing decisions, it invited SROs to sell market data separate and apart from the network processors for situations not involving trading and routing decisions. This is precisely what NASDAQ Basic does. NASDAQ Basic offers investors and members the opportunity to

¹ See Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data, Release No. 34-59039 (Dec. 2, 2008) ("Approval Order").

purchase less expensive NASDAQ data when consolidated data is no longer needed, including portfolio measurement, back-office operations, and communications with the public, where trading and routing decisions are not involved.

SIFMA's third objection is also an attack on the SEC's Approval Order and the manner in which it defined "core" and "non-core" market data. SIFMA claims incorrectly that NASDAQ Basic is a core data product when the Approval Order clearly states that only consolidated data is core data:

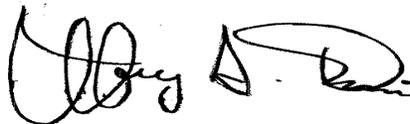
Non-core data should be contrasted with "core" data -- the best-priced quotations and last sale information of all markets in U.S.-listed equities that Commission rules require to be consolidated and distributed to the public by a single central processor. Pursuant to the authority granted by Congress under Section 11A of the Exchange Act, the Commission requires the self-regulatory organizations ("SROs") to participate in joint-industry plans for disseminating core data, and requires broker-dealers and vendors to display core data to investors to help inform their trading and order-routing decisions. In contrast, no Commission rule requires exchanges or market participants either to distribute non-core data to the public or to display non-core data to investors.²

NASDAQ Basic is not a consolidated or core product; it contains only NASDAQ data and NASDAQ produces it voluntarily. NASDAQ Basic contains a subset of core data but that overlap does not transform it into core data. SIFMA may disagree with the SEC's definition of non-core data, but that is for the US Circuit Court for the D.C. Circuit to assess.

SIFMA claims that NASDAQ Basic is not the product of competitive forces because the consolidated data feeds were "never subject to competitive forces or cost accounting." This argument is both economically incorrect and inconsistent with the SEC Approval Order. The fact that the consolidated feeds are not subject to competitive forces (by SEC mandate) does not alter the fact that NASDAQ's pricing of NASDAQ Basic is competitively constrained by the price of the consolidated feeds. Further, under the SEC Approval Order, non-core market data products such as NASDAQ Basic would never be subject to cost accounting analysis as SIFMA implies.

Finally, NASDAQ appreciates SIFMA's suggestion to decrease the administrative burden of purchasing NASDAQ market data, but that issue is unrelated to SEC review of this or other non-core market data proposals.

Respectfully submitted,



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² *Id.* at p. 4.)