



February 23, 2009

Ms. Elizabeth M. Murphy  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

Re: File No. SR-NASDAQ-2008-104

Dear Ms. Murphy,

Wedbush Morgan Securities Inc. (“Wedbush”) appreciates the opportunity to comment on the recent NASDAQ Stock Market, LLC (“NASDAQ”) proposed rule change noted above. Wedbush is a leading provider of clearing services and sponsored access solutions for registered broker-dealers and non-registered entities. As the top liquidity and volume provider<sup>1</sup> on the NASDAQ exchange, we are in a unique and highly qualified position to comment on the proposed rule changes. We appreciate NASDAQ and other exchanges recognizing the importance of sponsored access, and we support their attempt to implement reasonable controls to protect the integrity of the financial markets.

### **1. Importance of Sponsored Access**

Computerized trading has significantly increased the liquidity in the markets and thereby reduced the spread between the bid and offer on equities. Tighter spreads benefit the public and market participants. The competitive nature of this business segment demands that these liquidity providers and active traders have the fastest access to the markets possible so they can compete on a level playing field with direct members of the exchanges.

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<sup>1</sup> NASDAQ Trader Website, #1 Liquidity Provider for NASDAQ or NYSE Securities for each month since June 2006. #1 Monthly Share Volume for most recently published list (November 2008).

Wedbush has years of experience in successfully working with sophisticated clients who enter into sponsored access arrangements for NASDAQ and other markets. Under the current proposed sponsored access framework, we work closely with clients to understand, monitor, and support their risk management systems and compliance procedures on an ongoing basis. Under the current system of sponsored access, the sponsoring member has the responsibility for complying with the exchanges' rules and regulations in connection with the sponsored participant's activity. If not for sponsored access, many of these firms would become direct members of the exchanges and operate the same technology platforms, but trade without the benefit of the sponsoring members' due diligence, oversight, and financial resources. The current system of sponsored access thus reduces risk by providing a second level of protection that improves overall risk management.

## **2. Sponsored Access Requirements Should Not Be "One Size Fits All"**

We appreciate NASDAQ's desire to clearly define sponsored access. Specifically, NASDAQ and other exchanges should further clarify the proposed rule to identify the obligations based on the type of entity that is being sponsored. We believe the sponsored access rules and obligations of the sponsoring member should not be evenly applied to sponsored participants that are non-broker-dealers vs. registered broker-dealers vs. registered member broker-dealers. The proposed rule does not distinguish between these types of sponsored participants.

Sponsoring non-broker-dealers requires the highest level of due diligence, oversight, and controls. In this case, the sponsoring member is also the broker-dealer of record and would be held accountable for all the responsibilities as such. These responsibilities are clearly defined in other regulations including that of the exchanges, the Financial Industry Regulatory Authority ("FINRA"), and the Securities and Exchange Commission ("SEC").

When sponsoring broker-dealers that are not members of the exchange the rules should require policies and procedures designed to ensure that trading activity meets the requirements of the exchange, but stops short of requiring the sponsoring member to take responsibility for non-exchange regulatory requirements that are the responsibility of the broker-dealers designated examining authority.

When sponsoring an existing member of the exchange it seems duplicative to introduce additional order validation and regulatory checks beyond what the member would already have in place as a member of the exchange. Member firms are fully approved to enter orders directly to an exchange but choose to route their order flow through another member firm due to the sponsoring member firm's improved administration, risk management, technology, economics, or other factors. Member firms choosing to be sponsored by another member are still fully governed by the exchange. Financial markets benefit by having the sponsoring firm perform due

diligence and routine monitoring. We believe this category, sponsoring an existing member firm, should be permitted and exempt from the sponsored access rules.

### **3. Pre-Trade Risk Filters at Exchange Level – “Create a Level Playing Field”**

Elements of the sponsored access proposed rule imply certain pre-trade risk filters would be needed to reduce risk to the marketplace. We agree that such risk filters are important and, in fact, require that our sponsored participants perform appropriate pre-trade checks. In fact, in our experience, we have found that sponsored access clients already deploy sophisticated and high performance risk management systems. Other commenter’s have argued that these filters should be run through systems owned and operated by the sponsoring member or by third party vendors. A rule requiring those risk filters at the sponsoring member firm or by third party would add considerable latency, alter the competitive landscape and ultimately would not improve risk management.

Rather than putting in place complicated risk requirements that would apply only to sponsored access participants, we believe the exchanges should continue to improve their technology so that pre-trade risk filters are available on their platforms – for members and sponsored participants alike. Exchange rules should require that sponsored participants and direct members utilize these pre-trade risk filters to reduce risk while establishing a level playing field for all participants. Providing these pre-trade risk filters at the exchange level will create uniform controls and reduce risk for sponsoring members, sponsored participants, the exchange, regulators and the general public. Pre-trade risk filters benefit the entire industry by helping to prevent computerized trading malfunctions, executions during trading halts, clearly erroneous transactions, and other risky activity. Pre-trade risk filters should be applied to all participants whether sponsored or not. To do otherwise would encourage a “race to the bottom” as market participants structure themselves to avoid these important safeguards.

Exchanges have already introduced special order types and other risk mitigation solutions to address many of these issues. We strongly encourage the continued development of these capabilities and advocate that required filters be applied consistently to both sponsored participants and member participants.

### **4. Additional Restrictions on Sponsored Access Should Not Be Required**

Relative to trading activity on an exchange, sponsored access participants should not be subject to additional requirements beyond those applicable to direct members. Sponsored access rules should define the roles and responsibilities associated with the relationship, but actual trading should be governed by the existing exchange rules.

The SEC should continue to work with NASDAQ and other exchanges to implement sponsored access rules that provide a level playing field and improve the integrity of

the markets. These new rules should be evenly applied across all exchanges and implemented with a common effective date. Exchanges, member firms, and sponsored participants should be afforded reasonable time to implement any required changes. By implementing rule changes for all exchanges with a common effective date, exchanges, member firms, and sponsored participants only need to make procedural and technology adjustments once.

We appreciate the opportunity to present our views on the above referenced matter and welcome a more in-depth discussion on any of the topics above or other issues related to sponsored access.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeff Bell', with a large loop at the start and a long horizontal stroke extending to the right.

Jeff Bell  
Executive Vice President  
Wedbush Morgan Securities

cc: Mary L. Schapiro, Chairman, SEC  
Dr. Erik R. Sirri, Director, Division of Trading and Markets, SEC  
Richard G. Ketchum, Chief Executive, FINRA