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10/20/2010

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

RE: SR-NASDAQ-2010-128

Dear Ms. Murphy:

We are registering opposition to SR-NASDAQ-2010-128, a proposed rule change to incentivize trading in ETFs and Index-Linked Securities via an aggressive and disproportionate spread of $0.10 per 100 shares between the consumption and provision of liquidity in target securities.

We track trading patterns for dozens of public companies, applying database and software tools to historical trade-execution data on behalf of clients to help them understand price-setting forces in contemporary, complex trading environments.

This rule filing is intended principally to enhance business opportunities for the Self Regulatory Organization. It does not enhance capital formation; it promotes trading in derivative instruments the purpose of which is not rooted in forming capital for issuing enterprises. Further, the potential for diminished trading in issuer shares that may result from aggressive promotion of derivative products (even if they do meet the NMS definition of "stock") does not promote issuer interests fairly versus the interests of other market constituents; and does not comport with the language or spirit of the Securities and Exchange Acts of 1933 and 19934.

The SEC Act of 1933 says in Section 2(b): "*Whenever pursuant to this title the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation."*

Further, Section 15A of the Securities and Exchange Act of 1934 governing the predecessors to current self-regulatory organizations says in paragraph b(6): *"The rules…are designed…to promote just and equitable principles of trade…to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, to fix minimum profits, to impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by its members…."*

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The proposed rule filing is an impediment to free and open markets because it unfairly discriminates between the shares of issuers and tradable shares of ETFs and Index-Linked Securities. The rule also purports to provide an equitable allocation of reasonable dues, fees and other charges among members and issuers. It instead encourages the “development of new financial products” that take away market share opportunities for issuer shares without an offsetting reduction in listing fees.

Continuously in the capital markets now, the interests of issuers, without whom there would be no new financial products at all, derivative or otherwise, are subordinated to profit motives at exchanges (and not just the NASDAQ). By extension, the securities market for investors is distorted and impeded by incentivized trading schemes that purposefully and specifically alter behavior that is supposed to be unimpeded and free.

We need to stop incentivizing transient forms of market participation disproportionately and at the expense of capital formation. Further, transparency into what drives price and volume for issuers has all but disappeared behind a great cloud of transient trading practices and products. A good starting point for remedies to these problems is a moratorium of sorts on these rebate schemes that exacerbate structural shortcomings. While issuers recognize that the NASDAQ is a for-profit entity that seeks to enhance data and transactional revenues, it should not happen at the expense of issuers.

Issuers are a constituent, equal and vital part of the capital markets community. They rely on the self-regulatory organizations to hew to the imprimatur of securities markets regulations, which are intended to keep the playing field level and, above all else, to foster capital formation. Skewing trading in one set of securities versus others is unfair to issuers and contrary to the first principles of the capital markets.

Yours very truly,

Timothy Quast
Managing Director