

January 31, 2011

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

RE: *The NASDAQ Stock Market LLC; Suspension of and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change to Link Market Data Fees and Transaction Execution Fees*, Release No. 34-63796; File No. SR-NASDAQ-2011-010

Dear Ms. Murphy:

TD Ameritrade, Inc. (“TD Ameritrade” or “the Firm”)¹ welcomes the opportunity to comment on the above-referenced rule filing (the “Filing”) of the NASDAQ Stock Market LLC (“NASDAQ”) to tie discounts on the non-professional fees charged for its depth of book market data products (“DOB products”) to liquidity provided on its transaction platform, which became immediately effective under Section 19(b)(3)(A) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Subsequently, on January 28, 2011, the U.S. Securities and Exchange Commission (“Commission”) temporarily suspended the Filing and instituted proceedings to determine whether to approve or disapprove it.

TD Ameritrade applauds the Commission for temporarily suspending the Filing and instituting proceedings to review it. The Firm believes that the Filing should be disapproved as the Filing does not comply with NASDAQ’s obligations under the Exchange Act for market data fee filings, as articulated in the recent decision of the United States Court of Appeals for the District of Columbia in *NetCoalition v. Securities and Exchange Commission* (“*NetCoalition*”).² In its Filing, NASDAQ fails to address the Court order which, among other things, requires that exchanges assess market data that are “fair and reasonable,” as determined on the basis of a substantive justification of the costs of producing such data. NASDAQ’s Filing fails to meet these requirements and, therefore, disapproving it is in the public interest.

¹ TD Ameritrade is a wholly owned broker-dealer subsidiary of TD Ameritrade Holding Corporation (“TD Ameritrade Holding”). TD Ameritrade Holding has a 35-year history of providing financial services to self-directed investors. TD Ameritrade serves an investor base comprised of over 5.4 million funded client accounts with approximately \$386 billion in assets. For the quarter ended December 31, 2010, the Firm averaged a total of 372,000 client trades per day.

² 615 F.3d 525 (D.C. Cir. 2010).

The Firm also believes that the NASDAQ Depth Data Enterprise License instituted under 19(b)(3)(c) of the Exchange Act in October 2010³ should not have been revoked in lieu of the above referenced rule filing. NASDAQ contends that they are complementary programs, aimed at achieving similar results.⁴ This is not the case, as the previous program was significantly more beneficial for the non-professional market, allowing for unlimited distribution of NASDAQ depth data to all Level 1 users. Accordingly, the former program went farther at encouraging broad distribution of data to non-professionals, without forced tie-in arrangements with Average Daily Volume requirements.

As the Firm references in its recent Petition For Rulemaking submitted to Commission,⁵ market data is long overdue for a comprehensive review regarding the collection, distribution and costs of exchange data products. As a result, TD Ameritrade also strongly encourages the Commission to seek commentary and adopt proposals to modernize the long outdated market data regime.

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TD Ameritrade appreciates the opportunity to comment on the Filing and respectfully requests that the Commission disapprove the Filing consistent with the requirements under the Exchange Act. Please feel free to contact Chris Nagy at 402-970-5656 or Rich Urian at 443-539-2216 with any questions regarding our comments.

Respectfully Submitted,

/S/

Christopher Nagy
Managing Director Order Strategy
TD Ameritrade

/S/

Richard P. Urian
Global Head of Market Data

cc: Robert Cook, Director, Division of Trading and Markets
David Shillman, Associate Director, Division of Trading and Market

³ www.sec.gov/rules/sro/nasdaq/2010/34-63084.pdf.

⁵ Christopher Nagy, Managing Director Order Strategy, and Richard P. Urian, Global Head Market Data, TD Ameritrade, "Petition for Rulemaking Concerning Market Data Structure," to the Commission, dated January 28, 2011.