



Richard G. Ketchum
President

Direct Dial: 202-728-8020
Facsimile: 202-728-8075

February 19, 2001

Mr. Joel Seligman
Dean and Ethan A. H. Shipley University Professor
Washington University School of Law
1 Brookings Drive
Campus Box 1120
St. Louis, MO 63130

Re: Submission to SEC Market Data Advisory Committee

Dear Dean Seligman:

We are pleased to submit the views of the management of the Nasdaq Stock Market, Inc. on possible alternative approaches to collecting and disseminating market information. In addition to our submission entitled, *New Approaches to Market Information* (“white paper”), we also are submitting an addendum to the white paper responding to the agenda items for the upcoming March 1st meeting of the Advisory Committee.

As Nasdaq pursues its registration as a national securities exchange and implements SuperMontage, we believe now is an appropriate time to analyze our current market structure and consider possible alternatives for collecting and disseminating market information that would advance the policy goals established by Congress in 1975 to develop a national market system (“NMS”).

In the attached white paper, we propose two alternatives for collecting and disseminating market information – the “market choice” alternative and the “single consolidator” alternative. The market choice alternative, which Nasdaq strongly prefers, would operate as follows:

- Each exchange and SRO would **choose** whether to: (a) participate in an NMS plan governing last sale and quotation information for the participating exchanges through the facilities of the plan’s exclusive processor; or (b) not participate in an NMS plan and separately make its data available to any number of non-exclusive or competing processors (more commonly referred to as “market data vendors”);
- Non-exclusive or competing securities information processors (“SIPs”) would collect, process, and consolidate the last sale and BBO information from each SRO for each covered security and determine the NBBO for the security. In turn, such non-exclusive SIPs would make the consolidated data available to other market data vendors, broker-dealers, and end users;
- Exchanges could negotiate separately for the sale of that information plus enhanced information – such as the full depth of their respective books – to market data vendors, broker-dealers, and subscribers.

The single consolidator alternative – proposed as an incremental approach in response to your request seeking ways to improve the existing model – would contemplate the creation of a universal

exclusive processor (“Single Consolidator”) administered jointly by the participants of an associated NMS plan and subject to SEC oversight as follows:

- The Single Consolidator would operate as a public utility whose limited function would be to consolidate BBO and last sale information (and *only* last sale and BBO information) from each plan participant, sequence and validate that information, and make it available on behalf of the associated NMS plan to market data vendors, broker-dealers, and end users.
- Each plan participant would be required to make available its last sale and BBO information to the Single Consolidator.
- Each plan participant would be free to make enhanced information available to market data vendors and subscribers. In other words, the scope of the Single Consolidator would be limited to the collection and distribution of BBO and last sale information.

We believe that these alternatives not only advance the policy goals established by Congress in 1975, but can be achieved without amending the Securities Exchange Act of 1934 (the “Exchange Act”). In particular, we believe that Congress provided a framework that will allow the Advisory Committee to recommend a workable structure that promotes: (1) competition among all market participants; (2) wide availability of consolidated last sale and NBBO information; (3) fair and reasonable access to that market information; and (4) market data integrity, by encouraging the highest level of operational capacity for responsible processors of market information. Moreover, although the Exchange Act does not contemplate direct participation in NMS plans by non-SROs, we believe that such non-SROs (*e.g.*, ECN/ATs, other broker-dealers, investors, and market data vendors) should have a voice in the operation of any NMS plan through appropriately constituted advisory committees.

We hope that our views prompt further discussion and assist the Advisory Committee in its attempts to develop a workable structure for collecting, processing, and disseminating market information in a manner that encourages market competition without compromising the policy goals established by Congress more than a quarter century ago.

Sincerely,

Richard G. Ketchum
President

cc: Members of the Advisory Committee
Annette Nazareth, Director – SEC Division of Market Regulation
Robert L.D. Colby, Deputy Director – SEC Division of Market Regulation
The Honorable Laura S. Unger, Acting Chair – Securities and Exchange Commission
The Honorable Isaac C. Hunt, Jr., Commissioner
The Honorable Paul R. Carey, Commissioner

Attachments