Track Data
The most Powerful Quote System on Earth.

Via e-mail: rule-comments@sec.gov

August 25, 2005

U.S. Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, DC 20549-0609

Attention: Mr. Jonathan G. Katz, Secretary

Re: Commission File No. SR-NASD-2005-013

Ladies and Gentlemen:

Although the formal comment period has passed, Nasdaq filed commments in August, 2005, and Track Data seeks leave to file these comments instanter.

Because the comment letter from Bloomberg Tradebook raised all of the anticompetitive and other untoward marketplace consequences attendant to the Nasdaq proposal, Track ECN believed that its additional comments were unnecessary. However, in light of the recent response by Nasdaq, we feel that it is important that the Commission and Staff understand that, not only were the Bloomberg Tradebook comments in order and correct in all material respects but, in addition, it would seem that the Commission is being asked by Nasdaq to ignore, if not violate, the precepts of the Securities Act Amendments of 1975 and Section 11A of the Securities Exchange Act of 1934, in favoring one competitor (Nasdaq) over all of the others (the other non-NASD-owned ECNs).

The marketplace has dictated over the last few years that pricing for ECNs be reduced to no more than $.003 per share and that is the standard price charged by most ECNs and exchanges such as ARCA. The marketplace has accepted these fees and there is no legitimate purpose for Nasdaq to propose eliminating these fees. Further, Track ECN has been able to offer the highest published rebate to liquidity providers of $.027 per share because of its ability to charge $.003 per share on the Nasdaq Market Center. This is what Congress appears to have intended by the 75 Acts Amendments and is a consequence of fair competition.

However, traders, brokers and other market participants would not have this opportunity if fees were eliminated by the Nasdaq proposal.

Further, as stated in the Bloomberg letter, Nasdaq will be able to continue to charge an access fee to participants who access liquidity on BRUT and eventually Inet, and Nasdaq will use those access fees to pay rebates to participants posting liquidity on the BRUT and Inet facilities. This will allow BRUT and Inet to attract order flow by offering rebates which other ECNs participating in the Nasdaq Market Center would no longer be able to match if the Proposal is approved.

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Nasdaq offers as an alternative for ECNs who want to continue to charge access fees to utilize the Alternative Display Facility (the "ADF"). This would work fine if the ADF was an execution platform, however, it is only for display and virtually none of the Nasdaq participants who currently access liquidity are connected to the ADF.

In conclusion, the Nasdaq Proposal will benefit only Nasdaq, while harming traders, threatening the viability of all other ECNs that participate in the Nasdaq Market Center, and creating barriers to entry for new ECNs. Accordingly, the Nasdaq proposed rule change should be rejected.

We appreciate the opportunity to make our views known.

Respectfully Submitted,

Martin Kaye
CEO

cc: The Hon. Christopher Cox, Chairman
The Hon. Paul S. Atkins, Commissioner
The Hon. Cynthia A. Glassman, Commissioner
The Hon. Roel C. Campos, Commissioner
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