NASDAQ®
THE NASDAQ STOCK MARKET
9513 KEY WEST AVENUE
ROCKVILLE, MD 20850

August 5, 2005

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

Jonathan A. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Response to Comments - SR-NASD-2005-013

Dear Mr. Katz:

The Nasdaq Stock Market, Inc. ("Nasdaq") welcomes the opportunity to respond to comments submitted by Bloomberg Tradebook ("Bloomberg") in connection with the above-referenced rule proposal that seeks to establish equal fees for all users of Nasdaq market systems.

As an initial matter, Nasdaq rejects the assumption implicit in Bloomberg's letter that Nasdaq is obligated to have its fees structured only in a manner that suits Bloomberg and its business model. As one of many competing venues that trade equity securities, Nasdaq must be free to adopt and modify its fee and market structures so as to attract and provide ongoing value to all users. Moreover, as part of a self-regulatory organization, Nasdaq is obligated to treat all of its market participants fairly. As discussed in more detail below, Nasdaq's uniform fee proposal achieves both goals.

Before turning to the details of Bloomberg's concerns, however, Nasdaq believes it is important to review the history and regulatory framework governing the voluntary participation of Electronic Communications Networks ("ECNs"), like Bloomberg, in Nasdaq. As the Commission is aware, there is no rule or regulation that mandates that an ECN post its orders in Nasdaq. Indeed, many ECNs that once posted orders within Nasdaq have since elected to move voluntarily their activities to different trading venues not operated by Nasdaq, including regional exchanges and the NASD's Alternative Trading Facility ("ADF"). Indeed, the creation of the ADF was approved by the Commission specifically to provide such freedom to market participants. Further, as the Commission's Regulation ATS makes clear, ECNs electing to participate voluntarily in a particular market, including Nasdaq, can be made subject to the same fee levels generally applicable to other system participants.[1] This is exactly what the uniform fee structure proposal seeks to do.

Despite the manifest fairness of a uniform fee structure, and Nasdaq's clear authority to establish one, Bloomberg attempts to prevent its adoption by making unsupported and incorrect allegations regarding both the substance of the proposal and Nasdaq's motives in seeking its approval. Chief among these is the false assertion that the uniform fee structure proposal is driven by Nasdaq's recently announced pending purchase of the INET ECN. As Nasdaq's filing makes clear, the Board of Directors of Nasdaq approved the concept of a uniform fee structure for Nasdaq in October 2004, approximately six months prior to the negotiation of definitive agreements related to the Nasdaq/INET transaction. In addition, Bloomberg claims that a key goal of Nasdaq's uniform fee structure proposal is to consolidate Nasdaq's "market dominance by eliminating any remaining competition and erecting barriers to the entry of new competitors." Bloomberg makes this assertion despite being well aware that, as mentioned above, many other ECNs have left Nasdaq's quoting and execution systems to compete directly with Nasdaq, among them Island, Instinet (while they were separate entities), Archipelago, and Attain. Moreover, Bloomberg intentionally ignores the order protection provisions of the Commission's recently-adopted Regulation NMS. These provisions create a detailed order routing framework in which no market will be able to ignore orders displayed on competing market centers.[2] Finally, such assertions also intentionally ignore Nasdaq's long-standing and public concerns about how disparate ECN access fee amounts, when combined with the neutral order-delivery and execution algorithms used by Nasdaq systems, harm investors by creating strong disincentives for market participants to use those systems because they cannot anticipate exactly what their costs of executing a trade will be. While such a state of affairs is obviously in Bloomberg's financial self-interest, since it forces parties to interact with and pay them, it is clearly not in the interest of the overwhelming majority of market participants and investors who need to reliably estimate trading costs in order to ensure that they achieve the highest quality trade executions possible. In short, Bloomberg's complaints about the uniform fee proposal have nothing to do with market competition as a whole in the trading of equity securities, and have everything to do with how the proposal may impact their own individual business and financial interests.

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[1] Specifically, Regulation ATS' Rule 301(b)(4) provides in relevant part " … if the national securities exchange or national securities association to which an alternative trading system provides the prices and sizes of orders … establishes rules designed to ensure consistency with standards for access to the quotations displayed on such national securities exchange, or the market operated by such national securities association, the alternative trading system shall not charge any fee to members that is contrary to, that is not disclosed in the manner required by, or that is inconsistent with any standard of equivalent access established by such rules."

[2] The outlines of this highly competitive trading environment are already visible in Nasdaq's current routing practices that routinely sends orders to Archipelago, INET, and Attain (an ADF participant), in order to ensure that our customers receive high-quality executions. Nasdaq does so using an order router that goes beyond Regulation NMS' future order protection standards by attempting to trade not only with the best displayed prices and volume, but also with potentially available reserve and depth-of-book share amounts.

Bloomberg's lack of accuracy is not limited to Nasdaq's motives. Bloomberg also incorrectly asserts that Nasdaq's uniform price proposal is unnecessary in light of Regulation NMS' establishment of a $0.003 access fee maximum on best bid/offers displayed by a self-regulatory organization. Nasdaq's proposal is in complete accord with Regulation NMS' view that uniform fee structures promote equal regulation of markets and broker-dealers. Further, Nasdaq's proposed elimination of its $0.001 order delivery fee, when combined with the adoption of Nasdaq's current fee structure for all market participants, guarantees that Nasdaq's fees will always comply with Regulation NMS.[3] Not surprisingly, Bloomberg supports that portion of the uniform fee proposal that eliminates the $0.001 order delivery charge arguing that it is "toll" on the sending of orders to ECNs. This is in keeping with Bloomberg's consistent view that all other parties and systems must conform pricing and market structures to accommodate Bloomberg's business model. In reality, the benefits of order delivery accrue to ECNs like Bloomberg that are able to participate in Nasdaq's liquidity pool. Bloomberg naturally believes that Nasdaq should perform this service for its ECN order delivery participants without compensation.

Finally, Bloomberg takes issue with Nasdaq's elimination of the $0.001 order delivery fee for transactions taking place in Nasdaq's Brut ECN Facility. This was accomplished by Brut converting to a no access fee ECN in the Nasdaq Market Center – an option historically available to all Nasdaq ECNs, including Bloomberg. In short, Brut is currently treated like all other ECNs would be if the uniform fee structure proposal is approved. Brut's customers today pay less and have cost certainty. Nasdaq rejects the notion that such a result is anything other than a benefit to investors. Swift approval of Nasdaq's uniform fee proposal will ensure that all users of the Nasdaq Market Center receive them as well.

Sincerely,

Thomas P. Moran
Associate General Counsel

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3 This is not the case in today's Nasdaq market where most ECNs change $0.003 per share for accessing their quotes that, when combined with Nasdaq's current $0.001 order delivery fee, routinely results in access fee totals in excess of the Regulation NMS' $0.003 maximum.