



April 27, 2006

Re: NASD/Nasdaq Trade Reporting Facility
Release No. 34-52049; File No. 10-131

Dear Chairman Cox:

The New York Stock Exchange is deeply concerned about the proposal of the NASD to form a subsidiary, the NASD Trade Reporting Facility, that will allow the Nasdaq Stock Market, as a national securities exchange, to continue to retain the economic benefits from reporting off-exchange trades notwithstanding that these trades do not occur on the Nasdaq Stock Market. Permitting any exchange to receive economic benefits for off-exchange trades is inconsistent with the statutory framework for exchange registration and undermines the interests of investors.¹

But beyond this policy concern, the proposed NASD/Nasdaq Trade Reporting Facility would give Nasdaq an unfair competitive advantage over every other market participant that produces market data. This advantage derives from Nasdaq's monopoly over the Automated Confirmation Transaction Service (ACT), the system by which virtually all market participants have reported off-exchange dealer-internalized trades for more than a decade. ACT is an industry utility that holds broker terminal real estate captive. Unless Nasdaq's competitors have equal access to both ACT and the NASD/Nasdaq Trade Reporting Facility, the revenues they will generate will continue to go to Nasdaq. Conservative estimates suggest these revenues will be at least \$25 million annually.

Mr. Robert Glauber, Chairman and Chief Executive Officer, NASD, has stated that the NASD will "offer [the NASD/Nasdaq Trade Reporting] Facility on the same terms that it is proposed to be used by Nasdaq."² However, the NASD and Nasdaq staffs have been approached in search of just such a neutral, pro-competitive outcome, but have stated that the requisite access to ACT would be denied to other exchanges.

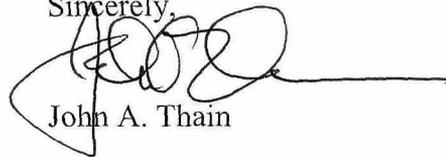
Since dealer-internalized trades do not contribute directly to price discovery, the ideal resolution would be to remove such trades from the revenue sharing formula. However, we recognize that it may not be practical for the Commission to take that approach at this time.

¹ See comment letters of Mary Yeager, Assistant Secretary, New York Stock Exchange, Inc. (August 12, 2005), Bart J. Ward, Chief Executive Officer, Ward & Co. (February 10, 2006), Kim Bang, Bloomberg, L.P. (November 17, 2005), Kevin J.P. O'Hara, Chief Administrative Officer and General Counsel, Archipelago Holdings, Inc. (November 10, 2005), John Boese, Vice President, Chief Regulatory Officer, Boston Stock Exchange, (November 4, 2005).

² Testimony of Robert Glauber before the Senate Committee on Banking, Housing, and Urban Affairs (March 9, 2006), in response to a question of Senator Paul Sarbanes.

Accordingly, if the Commission chooses to approve the NASD/Nasdaq Trade Reporting Facility, we ask that it do so in a manner that is fair to all markets: mandate that ACT be constituted as a neutral facility, available to Nasdaq and all other markets on a neutral, equal basis.

Sincerely,

A handwritten signature in black ink, appearing to read 'John A. Thain', with a long horizontal line extending to the right.

John A. Thain

Cc: The Honorable Paul Atkins
The Honorable Cynthia Glassman
The Honorable Roel Campos
The Honorable Annette Nazareth
Mr. Robert Colby, Acting Director, Division of Market Regulation

The Honorable Richard Shelby, Chairman
Committee on Banking, Housing and Urban Affairs, U.S. Senate

The Honorable Paul Sarbanes, Ranking Member
Committee on Banking, House and Urban Affairs, U.S. Senate

The Honorable Charles Hagel, Chairman
Subcommittee on Securities and Investment, U.S. Senate

The Honorable Christopher Dodd, Ranking Member
Subcommittee on Securities and Investment, U.S. Senate

The Honorable Michael G. Oxley, Chairman
Committee on Financial Services, U.S. House of Representatives

The Honorable Barney Frank, Ranking Member
Committee on Financial Services, U.S. House of Representatives

The Honorable Richard Baker, Chairman
Subcommittee on Capital Markets, Insurance and
Government Sponsored Enterprises, U.S. House of Representatives

The Honorable Paul Kanjorski, Ranking Member
Subcommittee on Capital Markets, Insurance and
Government Sponsored Enterprises, U.S. House of Representatives



Mr. Robert Greifeld, President and Chief Executive Officer
The Nasdaq Stock Market, Inc.

Mr. Robert R. Glauber, Chairman and Chief Executive Officer, NASD