BOSTON
STOCK EXCHANGE

Via email to www.rule-comments@sec.gov

November 4, 2005

Mr. Jonathan G. Katz
Secretary
US Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: NASD/Nasdaq Trade Reporting Facility
Release No. 34-52049; File No. SR-NASD-2005-087

Dear Mr. Katz,

The National Association of Securities Dealers, Inc. ("NASD") has filed new rules relating to its proposed separation from The Nasdaq Stock Market, Inc. ("Nasdaq"), along with Nasdaq's application for approval as a national securities exchange. The substantive aspect of the filing is the establishment of the NASD TRF, a proposed trade reporting facility owned jointly by the NASD and Nasdaq that is designed to circumvent the requirement that exchanges must honor other customer orders present on their own consolidated books. The Boston Stock Exchange, Inc. ("BSE" or "Exchange") is submitting this letter to comment on that specific aspect of the proposed TRF, as the Exchange believes that the proposed TRF would permit Nasdaq to continue to encourage its members to execute their own customer orders regardless of better priced orders that may be present in the Nasdaq marketplace, to the detriment of investors, and in an anti-competitive manner that essentially ignores the dictates of best execution that all other national securities exchanges are bound by.

Currently, NASD members enjoy a regulatory advantage regarding the execution of their orders, because there is no consolidated book which their orders must interact with before execution. All national securities exchanges exist with a "book" of orders which all other trading interest must interact with before being executed. Currently, in the Nasdaq marketplace, there is no such consolidated book, so NASD members are free to execute their orders within the much broader confines of the National Best Bid and Offer ("NBBO"), but without any restriction of being forced to interact with other orders in the Nasdaq marketplace, including those which are better prices, and which would offer price improvement opportunities.

This regulatory advantage has led to a sharp increase in the trading volume on the Nasdaq marketplace, particularly in exchange-listed securities, over the last several years. Obviously, NASD members enjoy the regulatory advantage of not having to interact with other better-priced orders that would give their customers better prices, but impair their ability to maximize their own profits. Indeed, there has been an exodus of firms from exchange's recently, with the many of these firms executing their own orders internally and "printing" them on the "third market" as Nasdaq executions. The profit margins for the firms are greater, because there is no requirement to respect, and seek out better priced contra-side trading interest (which would invariably result in better-priced executions). As a result, customer orders do not always receive the best price available in the marketplace.

Within the last two years, the BSE has experienced the loss of several major trading firms that have decided to change their business model to reap the profits that the Nasdaq marketplace offers. The BSE, and other exchanges, cannot compete with the regulatory imbalance that Nasdaq's "third market" offers, free of the constraints of a consolidated book. Competition is healthy in the marketplace, but unequal regulation unfairly tips the balance. Nasdaq has profited, and continues to profit, as a result. This profit is at the expense of the national securities exchanges and, more importantly, at the expense of investors.

The TRF proposal ignores the consolidated book requirement, and sets up a "print facility" that allows NASD members to ignore the best price within the Nasdaq marketplace, and have their trades executed at prices which they prefer, but which are not necessarily the best price offered within the Nasdaq marketplace. The consolidated book requirement that other exchanges are bound by would not exist for Nasdaq, and the regulatory imbalance that the Nasdaq Stock Market currently enjoys would continue. Furthermore, as the New York Stock Exchange discussed in an August 12, 2005 letter commenting on this same proposal, the users of the TRF facility will be financially incented by rebates funded by NASD's regulatory monies. Not only is this an impermissible allocation of NASD's revenues, but the practice further incents the "printing" of trades, at the expense of investors, by virtue of the fact that their orders may be printed regardless of better priced contra-side trading interest, and by the funneling of NASD regulatory funds being diverted to firms who would utilize the TRF and are financially incented for doing so.

For the reasons stated above, the BSE is firmly opposed to the proposed TRF. However, if approved as proposed, the BSE would need to consider a Commission filing to replicate at the BSE the regulatory advantage established by the TRF. This is not a preferred course of action, and the BSE would consider such a course to be a "race to the bottom", but would be left with no viable alternative in the face of such regulatory advantage. Preferably, the TRF proposal would be altered so that NASD members would respect better priced orders present in the Nasdaq marketplace, and the Nasdaq market would be held to the same consolidated book standard as other national exchanges.

We thank the Commission for granting us the opportunity to comment and are prepared to answer any questions that the Commission may have.

Sincerely,

John Boese
Vice President
Chief Regulatory Officer

Cc: Chairman Christopher Cox
Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Commissioner Cynthia A. Glassman
Commissioner Annette L. Nazareth