

Congress of the United States
House of Representatives
Washington, DC 20515-3806

December 14, 2005

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OFFICE OF THE
CHAIRMAN

The Honorable Christopher Cox
Chairman
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Mr. Chairman:

I am writing to express my concern about a proposed rule change that raises significant market structure public policy issues. On July 11, 2005, NASD filed with the Commission a proposed rule change that will ostensibly create a new NASD subsidiary, the Trade Reporting Facility ("TRF").

I understand that the TRF was created because it is illegal for an exchange to take credit for trades that do not occur on that exchange, so in connection with its proposal to become an exchange, the Nasdaq proposed to report off-exchange trades to the TRF. Yet, while the TRF is ostensibly a subsidiary of NASD, it is in fact a facility of Nasdaq, because Nasdaq controls the TRF and reaps the economic benefits of the TRF. Thus, the TRF does not cure the problem it was designed to at all. The Nasdaq, through the TRF, is retaining the benefits of the off-exchange trades that the law mandates must be reported elsewhere.

The TRF appears to have no purpose other than to provide a revenue stream to a market -- Nasdaq, in this case -- that in fact has no nexus with the actual trades that generated that revenue. If this approach is approved, other markets will have to follow suit simply in order to compete. The resulting proliferation of print facilities that do nothing other than inappropriately funnel revenues and trade information to markets that have no nexus with the actual trades does not serve any legitimate public interest

Furthermore, the TRF will provide a multimillion-dollar subsidy to Nasdaq (and possibly other markets) by a regulator. As one commenter observed, Nasdaq would be able to use those additional revenues to subsidize its entry into other competitive arenas, such as rebates designed to attract order flow to the the Nasdaq market. The NASD, as a regulator, would thus be furthering the competitive goals of an exchange that it regulates.

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There is a better solution: make the TRF in fact a facility of the NASD, not Nasdaq (or other markets), by requiring that the revenues and trade information generated by the TRF accrue to the NASD rather than other markets. This would permit the separation of the NASD and Nasdaq, consistent with the requirements for Nasdaq to become an exchange, without compromising the robust competition that is the hallmark of the U.S. marketplace.

Thank you for your attention in this regard. If you should have any questions, please feel free to contact me.

With kind regards, I am

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Gerlach". The signature is stylized with a long horizontal line extending to the left and a large, looped "G" at the end.

Jim Gerlach
Member of Congress.