

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65362; File No. SR-NASDAQ-2011-010)

September 20, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Disapproving a Proposed Rule Change to Link Market Data Fees and Transaction Execution Fees

I. Introduction

On January 10, 2011, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to discount certain market data fees and increase certain liquidity provider credits for members that both (1) execute specified levels of transaction volume on NASDAQ as a liquidity provider, and (2) purchase specified levels of market data from NASDAQ. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.³ Notice of filing of the proposed rule change was published in the Federal Register on January 27, 2011.⁴ The Commission suspended the proposed rule change and instituted proceedings to determine whether to disapprove the proposed rule change in an order published in the Federal Register on February 3, 2011.⁵ The

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ See Securities Exchange Act Release No. 63745 (January 20, 2011) 76 FR 4970 (“Notice”).

⁵ See Securities Exchange Act Release No. 63796 (January 28, 2011) 76 FR 6165 (“Order Instituting Disapproval Proceedings”).

Commission received three comment letters on the proposed rule change.⁶ On April 4, 2011, NASDAQ submitted a response letter to the comments.⁷ This order disapproves the proposed rule change.

II. Description of the Proposal

NASDAQ proposes to provide a discount on non-professional market data fees for NASDAQ Depth Data⁸ (“NASDAQ Depth Data Product Fees”) charged to a member that provides liquidity through the NASDAQ Market Center and incurs NASDAQ Depth Data Product Fees at certain specified levels.⁹ Specifically, a member would qualify as a:

- “Tier 1 Firm” for purposes of pricing during a particular month if it (i) has an average daily volume of 12 million shares or more of liquidity provided through the NASDAQ Market Center in all securities during the month; and (ii) incurs NASDAQ Depth Data Product Fees during the month of \$150,000 or more.

⁶ See Letter dated January 13, 2011 from William O’Brien, Chief Executive Officer, Direct Edge to Florence E. Harmon, Deputy Secretary, Commission (the “Direct Edge Letter”); Letter dated January 31, 2011 from Christopher Nagy, Managing Director Order Strategy, and Richard P. Urian, Global Head of Market Data, TD Ameritrade Inc. to Elizabeth M. Murphy, Secretary, Commission (the “TD Ameritrade Letter”); and Letter dated March 21, 2011 from Ira D. Hammerman, Senior Managing Director and General Counsel, SIFMA, and Markham Erickson, Executive Director and General Counsel, NetCoalition to Elizabeth M. Murphy, Secretary, Commission (the “SIFMA/NetCoalition Letter”).

⁷ See Letter dated April 4, 2011 from Joan Conley, Senior Vice President, NASDAQ OMX Group, Inc. to Elizabeth M. Murphy, Secretary, Commission (the “NASDAQ Response Letter”). In addition, on August 2, 2011, counsel for NASDAQ submitted a brief letter. See Letter dated August 1, 2011 from Eugene Scalia, Gibson, Dunn & Crutcher LLP to Elizabeth M. Murphy, Secretary, Commission (the “NASDAQ Counsel Letter”).

⁸ NASDAQ Depth Data includes National Quotation Data Service (individual market maker quotation data), TotalView (depth-of-book data for NASDAQ-listed securities), and OpenView (depth-of-book data for non-NASDAQ-listed securities) data products.

⁹ For a more detailed description of the proposed rule change, see Notice, supra note 4.

- “Tier 2 Firm” for purposes of pricing during a particular month if it (i) has an average daily volume of 35 million or more shares of liquidity provided through the NASDAQ Market Center in all securities during the month; and (ii) incurs NASDAQ Depth Data Product Fees during the month of \$300,000 or more.
- “Tier 3 Firm” for purposes of pricing during a particular month if it (i) has an average daily volume of 65 million or more shares of liquidity provided through the NASDAQ Market Center in all securities during the month; and (ii) incurs NASDAQ Depth Data Product Fees during the month of \$500,000 or more.

Tier 1 Firms would receive a 15% discount on NASDAQ Depth Data Product Fees charged to them, Tier 2 Firms would receive a 35% discount on NASDAQ Depth Data Product Fees charged to them, and Tier 3 Firms would receive a 50% discount on NASDAQ Depth Data Product Fees charged to them.¹⁰ In addition, Tier 1 Firms would receive an increased liquidity provider credit for transactions executed on NASDAQ. Specifically, Tier 1 Firms would receive a credit of \$0.0028 per share for displayed liquidity and \$0.0015 per share for non-displayed liquidity, compared to the current liquidity provider credit of \$0.0020 per share of displayed liquidity and \$0.0010 per share of non-displayed liquidity applicable to these firms. There is no proposed enhancement to the existing liquidity provider credits at this time for Tier 2 and Tier 3 firms.

¹⁰ A NASDAQ member incurs non-professional fees when it offers NASDAQ Depth Data to natural persons that are not acting in a capacity that subjects them to financial industry regulation (e.g., retail customers).

III. Summary of Comment Letters and NASDAQ's Response

The Commission received three comment letters objecting to the proposed rule change.¹¹ Shortly after NASDAQ filed the proposed rule change with the Commission, Direct Edge urged the Commission to suspend the proposed rule change and to institute proceedings to determine whether to approve or disapprove the proposal.¹² TD Ameritrade¹³ and SIFMA/NetCoalition believe that the filing should be disapproved by the Commission.

Evidence of Costs

SIFMA/NetCoalition argue that NASDAQ's proposal is deficient because NASDAQ does not provide any evidence of the costs of collecting and distributing market data to support the fairness and reasonableness of its fees.¹⁴ SIFMA/NetCoalition believe that NASDAQ's general contention that it incurs high fixed costs to operate its securities platform is inadequate to justify its proposed market data fees because SIFMA/NetCoalition believe those costs are driven principally, if not totally, by its trading services.¹⁵ DirectEdge and TD Ameritrade also argue that NASDAQ failed to provide necessary evidence of the costs of producing its market data as support for the fairness and reasonableness of its fees.¹⁶

NASDAQ responds that there is no legitimate basis for the demand that an exchange submit evidence on the marginal costs of collecting and distributing market data to prove a

¹¹ See supra, note 6.

¹² See Direct Edge Letter, supra note 6 at 1.

¹³ See TD Ameritrade Letter, supra note 6 at 1.

¹⁴ See SIFMA/NetCoalition Letter, supra note 6 at 2-3.

¹⁵ See SIFMA/NetCoalition Letter, supra note 6 at 3.

¹⁶ See Direct Edge Letter and TD Ameritrade Letter, supra note 6.

market data fee is “fair and reasonable.”¹⁷ NASDAQ asserts that the Commission has already considered and rejected a cost-of-service ratemaking approach to setting market data fees, instead adopting an approach that relies on market forces to determine the prices of depth-of-book products.¹⁸ NASDAQ acknowledges that cost data could be relevant in determining reasonableness, but takes the position that the fixed costs of market data production are inseparable from the fixed costs of providing NASDAQ’s trading platform.¹⁹

Joint Products

In its proposed rule change, NASDAQ argues that trade executions and market data are “joint products” which require NASDAQ to incur joint costs.²⁰ NASDAQ further states that these costs are inseparable because they are not uniquely incurred on behalf of either service provided by NASDAQ.²¹ Accordingly, NASDAQ is of the view that, given the joint nature of trade executions and market data, a bundled discount that is linked to total spending across the joint products is economically sensible.²²

SIFMA/NetCoalition believe that NASDAQ’s “joint products” theory is fundamentally flawed, and cannot support the conclusion that the proposed fees are fair and reasonable.²³ In their view, just because products are bundled together does not mean that the individual

¹⁷ See NASDAQ Response Letter, supra note 7 at 15.

¹⁸ See NASDAQ Response Letter, supra note 7 at 15.

¹⁹ See NASDAQ Response Letter, supra note 7 at 15-6.

²⁰ See Notice, supra note 4 at 4972.

²¹ See id.

²² Id.

²³ See SIFMA/NetCoalition Letter, supra note 6 at 4.

components are competitively priced or constrained by competitive forces.²⁴ SIFMA/NetCoalition also allege that NASDAQ offers no support for the conclusion that exchange competition constrains market data prices.²⁵ Further, SIFMA/NetCoalition argue that NASDAQ’s joint products “platform competition theory” is flawed as a matter of economics, because order-execution services and market data are bought and sold separately, at different times, in different proportions and by different consumers.²⁶ Accordingly, in SIFMA/NetCoalition’s view, the price of order execution services and market data is a result of distinct competitive conditions confronting each product, and competition for one does not constrain the pricing of the other.²⁷ In addition, SIFMA/NetCoalition argue that NASDAQ’s theory incorrectly assumes that traders could readily switch orders to another platform in response to a price increase in market data, and thereby lower their trading costs, because the decision to purchase the data is made before and independent of the decision to trade.²⁸ And for those investors who purchase only market data from a platform and no other services, their only choice is to pay the non-discounted data prices imposed by the exchange – prices that in SIFMA/NetCoalition’s view subsidize other exchange costs – or stop buying the data entirely.²⁹

²⁴ See id.

²⁵ See SIFMA/NetCoalition Letter, supra note 6 at 5.

²⁶ See id.

²⁷ See SIFMA/NetCoalition Letter, supra note 6 at 5.

²⁸ See SIFMA/NetCoalition Letter, supra note 6 at 5.

²⁹ See SIFMA/NetCoalition Letter, supra note 6 at 5.

Finally, SIFMA/NetCoalition argue that NASDAQ provided no actual evidence to support its platform competition theory.³⁰

NASDAQ responds that SIFMA/NetCoalition simply ignore the nature of competition among trading platforms, and states that customers can and do switch their trading volume from platform to platform, including in response to the total costs of trading on a particular platform.³¹ NASDAQ further believes that the evidence shows that NASDAQ does in fact compete for order flow by enhancing the quality of its data products and/or lowering the price of its data products.³²

In addition, NASDAQ argues that the proposed discount is not a “tying arrangement,” and even if it could be fairly characterized as such, presents no meaningful risk of harm to competition, consumers, or the efficient function of the markets.³³ Instead, NASDAQ takes the position that the proposed discount is an attempt by NASDAQ to provide incentives to its best customers to purchase two NASDAQ products in high volumes, and to use market data discounts as a “carrot” to attract additional retail order flow to the exchange.³⁴ NASDAQ believes that the potential competitive harm characterized by a tying arrangement, which arises from a seller’s exploitation of its control over the tying product to force the buyer into the purchase of a tied product that the buyer either did not want or might have preferred to purchase elsewhere on

³⁰ See SIFMA/NetCoalition Letter, supra note 6 at 6. Similarly, DirectEdge is of the view that NASDAQ’s arguments about the intermingled nature of the data- and transaction-services costs of operating an exchange platform are insufficient to satisfy its cost-justification obligations. See Direct Edge Letter, supra note 6 at 1.

³¹ See NASDAQ Response Letter, supra note 7 at 7.

³² See NASDAQ Response Letter, supra note 7 at 7.

³³ See NASDAQ Response Letter, supra note 7 at 9.

³⁴ See NASDAQ Response Letter, supra note 7 at 2.

different terms, does not arise from the NASDAQ proposal.³⁵ Even if the proposal was fairly characterized as a tying arrangement, NASDAQ believes the intensely competitive nature of the marketplace would remove any concerns, and argues that competitive forces ensure that its proposal is equitable, fair, and not unreasonably discriminatory.³⁶ Finally, NASDAQ stresses that it continues to offer all of its products separately at prices approved by the Commission as fair and reasonable.³⁷

Constraints on Market Data Pricing

SIFMA/NetCoalition do not believe that NASDAQ provides sufficient support for its argument that alternative sources of information act to constrain the prices it can charge for depth-of-book market data.³⁸ SIFMA/NetCoalition argue that investors need depth-of-book data from all exchanges with substantial trading in a particular security in order to have a reasonably comprehensive picture of liquidity below the top of the book in that security. Accordingly, in SIFMA/NetCoalition's view, any institutional investor or informed or active retail investor who trades or holds multiple equity securities must buy NASDAQ's available market data as a matter of necessity.³⁹ Thus, SIFMA/NetCoalition argue that the availability of depth-of-book data from

³⁵ See NASDAQ Response Letter, supra note 7 at 9. NASDAQ also does not believe that the proposal involves a tying arrangement because customers are not required to purchase a tied product from NASDAQ, nor are they required to forgo purchases of any product from any competitor. See NASDAQ Response Letter, supra note 7 at 10. See also NASDAQ Counsel Letter, supra note 7.

³⁶ See NASDAQ Response Letter, supra note 7 at 2-3.

³⁷ See NASDAQ Response Letter, supra note 7 at 10.

³⁸ See SIFMA/NetCoalition Letter, supra note 6 at 6-7.

³⁹ See SIFMA/NetCoalition Letter, supra note 6 at 7.

other venues does not effectively constrain the prices that NASDAQ can charge for depth-of-book data.⁴⁰

NASDAQ responds that the market for depth-of-book data products is fluid and robust, and that consumers of NASDAQ's depth-of-book product have different data needs, subscribe at different levels, and are sensitive to changes in price.⁴¹ NASDAQ further argues that the high degree of turnover that they have had in market data customers and the variation in subscription levels among users of NASDAQ data indicate that access to NASDAQ market data is not essential.⁴²

SIFMA/NetCoalition also argue that there is no evidence that competition for order flow constrains the price of market data, and suggests the data cited by NASDAQ in this regard is inadequate.⁴³ NASDAQ responds that competition for order flow can act as a significant constraint on depth-of-book data fees if those who purchase depth-of-book data direct a substantial volume of orders to the exchange, and presents evidence that it believes demonstrates this currently is the case at NASDAQ.⁴⁴

Unfair Discrimination

Finally, SIFMA/NetCoalition argue that the NASDAQ proposal is unfairly discriminatory because the proposed fee discounts are unavailable to firms that serve

⁴⁰ See SIFMA/NetCoalition Letter, supra note 6 at 7.

⁴¹ See NASDAQ Response Letter, supra note 7 at 19.

⁴² See NASDAQ Response Letter, supra note 7 at 19.

⁴³ See SIFMA Letter/NetCoalition, supra note 6 at 7-8.

⁴⁴ See NASDAQ Response Letter, supra note 7 at 20-21.

professional investors, or those that serve retail investors and purchase depth-of-book data but do not provide order execution services.⁴⁵

NASDAQ responds that differential pricing in response to competitive market conditions does not unreasonably discriminate between market participants.⁴⁶ NASDAQ notes that the Commission has accepted certain differential pricing structures, such as those based on volume or whether the recipient is a professional or non-professional.⁴⁷ NASDAQ takes the position that there is no evidence that the proposed discount would impair the functioning of the national market system or result in predatory prices, or threaten to injure competition among exchanges or customers.⁴⁸

IV. Discussion

Under Section 19(b)(2)(C) of the Act, the Commission shall approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to such organization.⁴⁹ The Commission shall disapprove a proposed rule change if it does not make such a finding.⁵⁰ The Commission's Rules of Practice, under Rule 700(b)(3), state that the "burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder ... is on the self-regulatory organization that proposed

⁴⁵ See SIFMA/NetCoalition Letter, supra note 6 at 8-9.

⁴⁶ See NASDAQ Response Letter, supra note 7 at 11.

⁴⁷ See NASDAQ Response Letter, supra note 7 at 11, 13-14.

⁴⁸ See NASDAQ Response Letter, supra note 7 at 14.

⁴⁹ See 15 U.S.C. 78s(b)(2)(C)(i).

⁵⁰ See 15 U.S.C. 78s(b)(2)(C)(ii); see also 17 CFR 201.700 (b)(3) and note 62 infra, and accompanying text.

the rule change” and that a “mere assertion that the proposed rule change is consistent with those requirements ... is not sufficient.”⁵¹

After careful consideration, the Commission does not find that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁵² In particular, the Commission does not find that the proposed rule change is consistent with: (1) Section 6(b)(4) of the Act which, among other things, requires that the rules of a national securities exchange “provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities;”⁵³ (2) Section 6(b)(5) of the Act which, among other things, requires that the rules of a national securities exchange be “not designed to permit unfair discrimination between customers, issuers, brokers, or dealers;”⁵⁴ (3) Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act];”⁵⁵ and (4) Section 11A of the Act and Rules 603(a)(1) and 603(a)(2) of Regulation NMS which, among other things,

⁵¹ See 17 CFR 201.700. The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding. See *id.* Any failure of a self-regulatory organization to provide the information elicited by Form 19b-4 may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the rules and regulations issued thereunder that are applicable to the self-regulatory organization. *Id.*

⁵² In disapproving the proposed rule change, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

⁵³ 15 U.S.C. 78f(b)(4).

⁵⁴ 15 U.S.C. 78f(b)(5).

⁵⁵ 15 U.S.C. 78f(b)(8).

require NASDAQ to distribute market data on terms that are “not unreasonably discriminatory.”⁵⁶

NASDAQ proposes to link the level of fees that a market participant would be charged for obtaining NASDAQ market data to the extent of that market participant’s trading in the NASDAQ market. In addition, the level of transaction credits that a market participant receives for trading on NASDAQ would in some cases be linked to the level of NASDAQ market data that it purchases. In the Order Instituting Disapproval Proceedings, the Commission highlighted the statutory provisions and rules referenced above, and expressed concern, among other things, that NASDAQ’s proposal may fail to satisfy the standards under the Act and the rules thereunder that require market data fees to be equitable, fair, and not unreasonably discriminatory.⁵⁷ In addition, the Commission noted that it previously had stated that the Act precludes exchanges from adopting terms for market data distribution that unfairly discriminate by favoring participants in an exchange’s market or penalizing participants in other markets, and expressed particular concern that NASDAQ’s proposal may be inconsistent with that standard.⁵⁸ The Commission raised similar concerns with respect to NASDAQ’s proposal to tie the level of transaction credits paid to market participants to the amount of market data they purchase.⁵⁹

The Commission does not believe NASDAQ has demonstrated that the incremental step of linking the pricing of trade executions and market data will not unnecessarily or

⁵⁶ 15 U.S.C. 78k-1(a)(1)(C)(i)-(iv), 17 CFR 242.603(a)(1), and 17 CFR 242.603(a)(2).

⁵⁷ See Order Instituting Disapproval Proceedings at 4.

⁵⁸ See Order Instituting Disapproval Proceedings at 5-6.

⁵⁹ See Order Instituting Disapproval Proceedings at 6.

inappropriately burden competition. As noted above, NASDAQ takes the position that trade executions and market data are “joint products,” with joint costs, and that a bundled discount that is linked to total spending across both products is economically sensible. NASDAQ argues it currently faces intense competition for both trade executions and market data, and that its proposal is simply an attempt to incent its best customers to purchase both products in high volumes, and use market data discounts as a “carrot” to attract additional retail order flow to the exchange.

The Commission, however, does not believe that NASDAQ has adequately articulated why the linking of market data fees to execution volume, and the linking of transaction credits to market data purchases, will not negatively impact the competition that exists today in these two markets. In fact, the Commission believes that preventing the linking of market data fees to trade executions will help bolster competitive forces in the area of market data, because exchange market data fees must appeal simultaneously to market participants that trade directly on an exchange and those that do not trade directly on an exchange. The Commission notes that competition in the market for depth-of-book market data is significant, but is not as intense as competition for transaction services. This is at least in part due to the difficulty of attracting a sufficiently large volume of orders to generate valuable market data streams that a wide range of market participants will want to obtain, as opposed to the relative ease of establishing trading platforms. The Commission believes it is important to preserve competitive forces for market data as much as possible.

The Commission is similarly concerned about placing an undue burden on competition in the execution services market. NASDAQ’s proposal would allow it to use significant discounts

on fees for its market data products as an inducement to attract order flow rather than relying on the quality of its transaction services and the level of its transaction fees to compete for orders. NASDAQ argues that any competitor exchange could choose to respond to the proposed pricing by NASDAQ by offering its own discounts on its data products.⁶⁰ However, exchanges that do not provide market data, or that already do not charge any participant for market data, would not be able to respond to NASDAQ's proposal with a similar pricing scheme. New exchanges generally do not have established market data streams and their market data is often free. Thus, new exchanges would not be able to offer a pricing scheme similar to NASDAQ's proposal because they will not have established market data streams they can offer at reduced rates to entice participants to execute trades on their new platforms.

The Commission also does not believe NASDAQ has demonstrated that the incremental step of linking the pricing of trade executions and market data is an equitable allocation of fees, or is not unfairly or unreasonably discriminatory. As noted above, NASDAQ believes the marketplace is intensely competitive, and argues that competitive forces ensure that its proposal is equitable, fair and not unreasonably discriminatory. NASDAQ's proposal, however, could result in market participants purchasing the same market data from NASDAQ paying different fees depending on the volume of transactions they execute on NASDAQ. NASDAQ's proposal also could result in market participants executing the same volume of transactions on NASDAQ receiving different transaction credits depending on the amount of market data they purchase from NASDAQ.

⁶⁰ See NASDAQ Response Letter, *supra* note 7 at 14.

The Commission is concerned that the proposal would result in an inequitable allocation of fees, and unfairly or unreasonably discriminate against market participants who are large users of market data but not execution services, or who are large users of execution services but not market data. This could include, for example, market participants who need to divide their order flow among multiple exchanges that trade NMS stocks, or that utilize market data but do not trade on NASDAQ, and thus do not provide sufficient transaction volume to NASDAQ to qualify for a larger market data discount or any discount at all. In this regard, the Commission is concerned that linking market data fees to transaction volume would essentially allow NASDAQ to charge significantly higher fees for market data to market participants that choose to trade at other exchanges, by providing discounts to those market participants that provide order flow to NASDAQ.⁶¹ As noted above, Rule 700(b)(3) of the Commission’s Rules of Practice states that “[t]he burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder ... is on the self-regulatory organization that proposed the rule change” and that a “mere assertion that the proposed rule change is consistent with those requirements ... is not sufficient.”⁶² For the reasons set forth above, the Commission does not believe that NASDAQ has met its burden to demonstrate that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

⁶¹ “[A]n exchange proposal that seeks to penalize market participants for trading in markets other than the proposing exchange would present a substantial countervailing basis for finding unreasonable and unfair discrimination and likely would prevent the Commission from approving an exchange proposal.” See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74791 (December 9, 2008) (SR-NYSEArca-2006-21) (Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data), vacated and remanded by NetCoalition v. SEC, No. 09-1042 (DC Cir. 2010) but on other grounds.

⁶² 17 CFR 201.700(b)(3).

V. Conclusion

For the foregoing reasons, the Commission does not find that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, with Sections 6(b)(4), 6(b)(5), 6(b)(8) and 11A of the Act and with Rule 603(a)(1) and (2) of Regulation NMS thereunder.

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR-NASDAQ-2011-010) be, and hereby is, disapproved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶³

Elizabeth M. Murphy
Secretary

⁶³ 17 CFR 200.30-3(a)(12).