



July 11, 2008

**VIA EMAIL**

Nancy M. Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-9303

**RE: Notice of Proposed Order Approving Proposal by NYSE Arca, Inc. To Establish Fees for Certain Market Data and Request for Comment (SR-NYSEArca-2006-21)**

Dear Ms. Morris:

Citigroup Global Markets Inc.<sup>1</sup> ("CGMI") is pleased to have this opportunity to comment on the proposed order (the "Proposed Order") by the Securities and Exchange Commission (the "SEC") approving a market data fee proposal by NYSE Arca (the "NYSE Arca Proposal"). CGMI participated in the drafting of the letter by the Securities Industry and Financial Markets Association ("SIFMA"), dated July 10, 2008 (the "SIFMA Letter"), opposing approval of the Proposed Order. CGMI strongly supports the SIFMA Letter, and joins with SIFMA in opposing approval of the Proposed Order. We are writing separately to highlight certain issues noted in the SIFMA Letter.

The Securities Exchange Act of 1934 ("Exchange Act") and Regulation NMS require that exchanges set market data fees at levels that are "fair and reasonable". Accordingly, the Proposed Order sets out a methodology for determining whether the NYSE Arca market data fee proposals generally meet that requirement. The methodology first divides up market data fee proposals into those involving fees for "core data" (generally, data providing "top of book" quotes) and those involving "non-core" data (generally, data providing more than "top of book" quotes, such as "depth of book" quotes). Market data fee proposals involving "non-core" data would be examined under the SEC's test to determine whether the exchange proposing the market data fee was subject to "significant competitive forces" in setting the terms for access to non-core data, including the level of any fees. If the SEC finds that the exchange was subject to significant competitive forces, then (absent any substantial countervailing factors), the SEC will approve a proposal involving non-core data. If the exchange was not subject to significant

---

<sup>1</sup> Citigroup Inc. is a diversified global financial services holding company whose businesses provide a broad range of financial services to consumer and corporate clients as well as governments and other institutions. Citigroup has some 200 million client accounts and does business in more than 100 countries. Citigroup's primary U.S. broker-dealer subsidiary, Citigroup Global Markets Inc., is registered as a broker-dealer in all 50 states, the District of Columbia, Puerto Rico, Taiwan and Guam, and is also a primary dealer in U.S. Treasury securities and a member of the principal United States futures exchanges. Additional information may be found at [www.citigroup.com](http://www.citigroup.com) or [www.citi.com](http://www.citi.com).

competitive forces in setting the terms of the proposal for non-core data, the SEC will require the exchange to provide a substantial basis, other than competitive forces, in its proposed rule change in "demonstrating that the terms of the proposal are equitable, fair, reasonable, and not unreasonably discriminatory."<sup>2</sup> Using the test it has just devised, the SEC approves the NYSE Arca market data fee proposal.

CGMI believes that the NYSE Arca market data fee proposal is not in any way subject to competitive forces, much less "significant" competitive forces. Specifically, there exists a monopoly over market data exercised by the two dominant for-profit exchanges, which by the *SEC's own estimation* collectively constitute almost 70% of all executed transaction volume.<sup>3</sup> Market participants – whether financial institutions, information providers (such as members of NetCoalition), or investors – have no comparable option to obtain the same quality of market data as is available through these two dominant exchanges. By finding "significant competitive forces" where virtually no competition exists, the Proposed Order would allow the two dominant for-profit exchanges free reign to set market data fees with complete disregard for whether such fees were "fair and reasonable."

In addition to finding "significant competitive forces" where none exist, the Proposed Order also dismisses the need of market participants to access "non-core" depth-of-book data. In this regard, the Proposed Order's statements that "depth-of-book" data is not needed to fulfill a broker-dealer's best execution obligation under the Exchange Act is insufficient. Competitive pressures on market intermediaries to ensure the best execution to their customers, as distinguished from the SEC's current interpretation of what best execution requires, is not possible without fair access to the entire depth of the market book.

CGMI respectfully suggests that the draft order be abrogated, and that the NYSE Arca Proposal remain pending while the SEC publishes for comment a rule proposal setting out objective requirements that market data fee proposals must meet in order to be approved by the SEC. This test should ensure at a minimum that any market data fee proposal i) disclose any costs associated with its collection of market data in order to allow the SEC to determine whether fees associated with such market data are "equitable, fair, reasonable, and not unreasonably discriminatory," and ii) that any market data fee proposal be subject to publication and comment.

We appreciate the opportunity for CGMI to comment on this important proposal.

Sincerely,



Richard Bartlett  
Managing Director

---

<sup>2</sup> Proposed Order, p. 4.

<sup>3</sup> See Proposed Order, Table 1, p. 49. The table shows the reported share volume in US-listed equities during December 2007. According to the table, Nasdaq has 29.1% of such volume; NYSE and NYSE Arca combined have 38% (given NYSE and NYSE Arca are owned by the same parent company, we have aggregated their share volume). Together, the two dominant exchanges constitute 67.1% share volume during December 2007.