



DIVISION OF
MARKET REGULATION

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

December 29, 2006

Ms. Ann Vlcek
Vice President and Associate General Counsel
The Securities Industry and Financial Markets Association
1425 K Street, NW
Washington, DC 20005-3500

RE: Request for Temporary No-Action Relief from Exchange Act Rules 17a-3, 17a-25, and 17a-5 Relative to NASDAQ's Commencement of Operation as an Exchange.

Dear Ms. Vlcek:

This letter is written in response to your letter, dated December 29, 2006, in which the Securities Industry and Financial Markets Association (or "SIFMA") requests both an extension of the No Action relief granted by the staff of the Division of Market Regulation (the "Division") on July 31, 2006, as well as certain additional relief as described below, regarding the NASDAQ Stock Market LLC's ("NASDAQ") operation as a national securities exchange.

I. Background

On July 31, 2006, the staff of the Division confirmed to the Securities Industry Association (now SIFMA) by letter that it would not recommend to the Commission enforcement action under Rules 17a-3 or 17a-25 of the Securities Exchange Act of 1934 ("Exchange Act") if a broker-dealer reflects 1) NASDAQ as an over-the-counter ("OTC") market instead of an exchange market, 2) NASDAQ securities as OTC securities instead of exchange-listed securities, and/or 3) a broker-dealer as a member of NASD rather than as a member of NASDAQ (or vice versa) on required books and records and securities transaction information submitted to the Commission.¹ This relief was extended with respect to NASDAQ UTP Plan securities,² and is due to expire on December 31, 2006.

¹ See Securities Industry Association, 2006 SEC No-Act. LEXIS 582 (Jul. 31, 2006). Hereinafter, "securities transaction information submitted to the Commission" may also be referred to as "transaction reports."

² Transactions are reported pursuant to two national market system plans: Nasdaq-listed securities are reported to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (referred to either as "UTP Plan securities" or "NASDAQ-listed securities"); securities listed on other national securities exchanges (i.e., the New York Stock Exchange and the American Stock Exchange) are reported to the Consolidated Transaction Association Plan (referred to as "CTA Plan securities" or "non-NASDAQ-listed securities").

At the time the relief was requested, NASDAQ believed that it would become a national securities exchange for trading both UTP Plan and CTA Plan securities and would have completed the integration of its systems to its Single Book execution system platform for both UTP Plan and CTA Plan securities prior to December 31, 2006. However, NASDAQ has since run into some obstacles to meeting that target.

At this point NASDAQ is operating as an exchange market for NASDAQ-listed securities and it has integrated its systems to its Single Book execution system platform for those securities. However, NASDAQ is not presently operating as an exchange market for non-NASDAQ-listed securities and it has not integrated its systems to its Single Book execution system platform for non-NASDAQ-listed securities. NASDAQ presently believes that it will begin operating as an exchange market for non-NASDAQ-listed securities and will integrate its systems to its Single Book execution system platform for those securities on the same day.

II. Requested Relief

1. Extension of Prior Relief for NASDAQ-listed Securities

SIFMA believes that some broker-dealers may not have planned to be able to distinguish between NASDAQ-listed securities and non-NASDAQ-listed securities after December 31, 2006 because they were relying on all NASDAQ trades being exchange-listed after that date and, therefore, they may need additional time to make programming changes.

Consequently, SIFMA is requesting that the staff of the Division of Market Regulation extend the relief it granted to broker-dealers last July 31, 2006 relating to NASDAQ-listed securities from December 31, 2006 to sixty days following the date NASDAQ begins operating as an exchange for non-NASDAQ-listed securities and completes the integration of its systems to its Single Book execution system platform for those securities.

2. Request for Relief Regarding Non-NASDAQ-listed Securities

A. Broker-dealers that have Already Programmed Systems Changes

Some broker-dealers have already updated their systems so that, after December 31, 2006, their required books and records and transaction reports will reflect, for transactions in non-NASDAQ-listed securities 1) NASDAQ as an exchange market instead of an OTC market, and 2) the transaction as having occurred on an exchange market rather than an OTC market, and/or 3) a broker-dealer as a member of the NASDAQ rather than as a member of the NASD. As a result of NASDAQ's delay, these broker-dealers' required books and records and transaction reports will be incorrect until the NASDAQ begins operating as an exchange for non-NASDAQ-listed securities and

completes the integration of its systems to its Single Book execution system platform for those securities.

Consequently, SIFMA is requesting that the staff of the Division confirm that the Division will not recommend to the Commission enforcement action under Exchange Act Rules 17a-3 and 17a-25 against a broker-dealer that reflects, for transactions in non-NASDAQ-listed securities 1) NASDAQ as an exchange market instead of an OTC market, and/or 2) the transaction as having occurred on an exchange market rather than an OTC market, and/or 3) a broker-dealer as a member of the NASDAQ rather than as a member of the NASD on its required records and transaction reports from January 1, 2007 until the date the NASDAQ begins operating as an exchange for non-NASDAQ-listed securities and completes the integration of its systems to its Single Book execution system platform for those securities.

B. Anticipatory Relief for Broker-dealers to Make Systems Changes

SIFMA wants to ensure that broker-dealers have sufficient time both to make and to test system changes necessary to provide for the operation of NASDAQ as an exchange market for non-NASDAQ-listed securities and to allow for a smooth integration of NASDAQ's systems to its Single Book execution system platform for those securities.

Consequently, SIFMA is requesting that the staff of the Division confirm that the Division will not recommend to the Commission enforcement action under Exchange Act Rules 17a-3 and 17a-25 against a broker-dealer that reflects, for transactions in non-NASDAQ-listed securities, 1) NASDAQ as an OTC market instead of an exchange market, 2) the transaction as having occurred on an OTC market rather than an exchange market, and/or 3) a broker-dealer as a member of NASD rather than as a member of NASDAQ on required books and records and securities transaction information submitted to the Commission from the date NASDAQ begins operating as an exchange for non-NASDAQ-listed securities and completes the integration of its systems to its Single Book execution system platform for those securities until sixty days thereafter.

3. Request for Relief from Exchange Act 17a-5

Due to the above-described systems complications, some broker-dealers may incorrectly classify securities commission revenues generated by transactions in NASDAQ-listed and non-NASDAQ-listed securities in the Statement of Income (Loss) section on FOCUS Reports submitted to the broker-dealers' designated examining authorities in accordance with Exchange Act Rule 17a-5.³

³ 17 CFR 240.17a-5.

Consequently, SIFMA is requesting that the staff of the Division confirm that the Division will not recommend to the Commission enforcement action under Exchange Act Rule 17a-5 before the sixtieth day following the date NASDAQ begins operating as an exchange for non-NASDAQ-listed securities and completes the integration of its systems to its Single Book execution system platform for those securities if a broker-dealer mis-allocates securities commission revenues generated by transactions in NASDAQ-listed and non-NASDAQ-listed securities on FOCUS reports submitted to the broker-dealer's designated examining authority.

III. Response

Based on your representations and the facts presented, the Division will not recommend to the Commission enforcement action under Exchange Act Rule 17a-3 if a broker-dealer reflects on books and records required under Exchange Act Rule 17a-3;

- a) for transactions in NASDAQ-listed securities, 1) NASDAQ as an OTC market instead of an exchange market, 2) NASDAQ securities as OTC securities instead of exchange-listed securities, and/or 3) a broker-dealer as a member of NASD rather than as a member of NASDAQ (or vice versa) until the sixtieth day following the date NASDAQ begins operating as an exchange for non-NASDAQ-listed securities and completes the integration of its systems to its Single Book execution system platform for those securities;
- b) for transactions in non-NASDAQ-listed securities by a broker-dealer that has programmed the appropriate systems changes, 1) NASDAQ as an exchange market instead of an OTC market, and/or 2) the transaction as having occurred on an exchange market rather than an OTC market, and/or 3) a broker-dealer as a member of the NASDAQ rather than as a member of the NASD until the date NASDAQ begins operating as an exchange for non-NASDAQ-listed securities and completes the integration of its systems to its Single Book execution system platform for those securities; and
- c) for transactions in non-NASDAQ-listed securities by a broker-dealer that has not programmed the appropriate systems changes, 1) NASDAQ as an OTC market instead of an exchange market, 2) the transaction as having occurred on an OTC market rather than an exchange market, and/or 3) a broker-dealer as a member of NASD rather than as a member of NASDAQ from the date NASDAQ begins operating as an exchange for non-NASDAQ-listed securities and completes the integration of its systems to its Single Book execution system platform for those securities until sixty days thereafter.

Broker-dealers either should maintain sufficient additional records to identify that a given transaction was effected on an exchange market or an OTC market, that the security is an exchange-listed security or an OTC security, and/or that the broker-dealer is either a

member of NASDAQ or NASD, or may rely on the NASDAQ to access and obtain this information until the end of the no-action relief period.⁴

In addition, the Division will not recommend to the Commission enforcement action under Exchange Act Rule 17a-25 if a broker-dealer reflects in securities transaction information submitted to the Commission pursuant to Exchange Act Rule 17a-25;

- a) for transactions in NASDAQ-listed securities, NASDAQ as an OTC market instead of an exchange market and NASDAQ securities as OTC securities instead of exchange-listed securities until the sixtieth day following the date NASDAQ begins operating as an exchange for non-NASDAQ-listed securities and completes the integration of its systems to its Single Book execution system platform for those securities;
- b) for transactions in non-NASDAQ-listed securities by a broker-dealer that has programmed the appropriate systems changes, NASDAQ as an exchange market instead of an OTC market, and/or the transaction as having occurred on an exchange market rather than an OTC market until the date NASDAQ begins operating as an exchange for non-NASDAQ-listed securities and completes the integration of its systems to its Single Book execution system platform for those securities; and
- c) for transactions in non-NASDAQ-listed securities by a broker-dealer that has not programmed the appropriate systems changes, NASDAQ as an OTC market instead of an exchange market, and/or the transaction as having occurred on an OTC market rather than an exchange market from the date NASDAQ begins operating as an exchange for non-NASDAQ-listed securities and completes the integration of its systems to its Single Book execution system platform for those securities until sixty days thereafter.

Finally, the Division will not recommend to the Commission enforcement action under Exchange Act Rule 17a-5 if a broker-dealer incorrectly classifies securities commission revenues generated by transactions in NASDAQ-listed and non-NASDAQ-listed securities on FOCUS reports submitted to the broker-dealer's designated examining authority until the sixtieth day following the date NASDAQ begins operating as an exchange for non-NASDAQ-listed securities and completes the integration of its systems to its Single Book execution system platform for those securities.

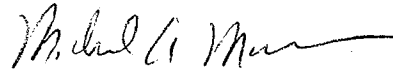
This position concerns enforcement action only and does not represent a legal conclusion with respect to the applicability of statutory or regulatory provisions of the federal securities laws. Moreover, this position is based on the facts you have presented

⁴ Letter from Mary Revell, Associate Vice President, The NASDAQ Stock Market, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation, SEC (August 4, 2006), telephone conversation on November 15, 2006, and Letter from Mary Revell, Associate Vice President, The NASDAQ Stock Market, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation, SEC (December 29, 2006).

Ms. Ann Vlcek
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and the representations you have made, and any different facts or conditions may require a different response. This position is subject to modification or revocation if at any time the Commission or the Division determines that such action is necessary or appropriate in furtherance of the purposes of the Exchange Act. The Division expresses no view with respect to any other questions that the proposed activities may raise, including the applicability of other federal or state laws or self-regulatory organization rules to those activities.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael A. Macchiaroli", with a long horizontal flourish extending to the right.

Michael A. Macchiaroli
Associate Director



December 29, 2006

Michael A. Macchiaroli
Associate Director
Division of Market Regulation
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Request for Temporary No-Action Relief from Exchange Act Rules 17a-3, 17a-25, and 17a-5 Relative to NASDAQ's Commencement of Operation as an Exchange

Dear Mr. Macchiaroli,

The NASDAQ Exchange Working Group of the Securities Industry and Financial Markets Association¹ ("SIFMA"), formerly the Securities Industry Association or SIA, appreciates the Securities and Exchange Commission ("SEC" or "Commission") Division of Market Regulation ("Division") staff's grant of no-action relief to broker-dealers until December 31, 2006 in connection with the commencement of NASDAQ's operation as a national securities exchange for NASDAQ-listed securities and concerning certain books and records requirements under Rule 17a-3 of the Securities Exchange Act of 1934 ("Exchange Act") and certain securities transaction information required to be submitted to the Commission pursuant to Rule 17a-25 of the Exchange Act.²

Because of the unanticipated delay in NASDAQ's completion of its systems integration for securities listed on other national securities exchanges and reported to the

¹ The Securities Industry and Financial Markets Association brings together the shared interests of more than 650 securities firms, banks and asset managers. SIFMA's mission is to promote policies and practices that work to expand and perfect markets, foster the development of new products and services and create efficiencies for member firms, while preserving and enhancing the public's trust and confidence in the markets and the industry. SIFMA works to represent its members' interests locally and globally. It has offices in New York, Washington D.C., and London and its associated firm, the Asia Securities Industry and Financial Markets Association, is based in Hong Kong.

² Letter from Michael A. Macchiaroli, Associate Director, SEC Division of Market Regulation, to Ann Vicek, Vice President and Associate General Counsel, SIA (July 31, 2006) ("No-Action Letter"), which is available at <http://www.sec.gov/divisions/marketreg/mr-noaction/sia073106.pdf> along with SIA's Letter requesting this relief from Ann Vicek to Michael Macchiaroli, dated July 28, 2006 ("SIA Letter").

Consolidated Tape Association Plan ("non-NASDAQ listed securities") and consequent delay in becoming operational as a national securities exchange for trading those securities,³ we are requesting (1) an extension of the Division's previously-granted no-action relief regarding transactions in NASDAQ-listed securities; (2) similar no-action relief for broker-dealers regarding transactions in non-NASDAQ listed securities; and (3) no-action relief for certain broker-dealers who may be ready to implement systems changes to accommodate NASDAQ's operating as a national securities exchange in non-NASDAQ listed securities before NASDAQ commences doing so. We request that the relief in the first instance be extended from December 31, 2006 until a date that is sixty days after the date NASDAQ begins operation as an exchange for non-NASDAQ listed securities and completes the integration of its systems to its Single Book execution system platform for those securities. In the second instance, we request that the relief begin on the date NASDAQ begins operating as an exchange for non-NASDAQ listed securities and completes the integration of its systems to its Single Book execution system platform for those securities and extend until a date sixty days thereafter. In the third instance, we request that the relief begin on January 1, 2007 and extend until the date NASDAQ begins operation as an exchange for non-NASDAQ listed securities and completes the integration of its systems to its Single Book execution system platform for those securities.

Finally, we request no-action relief from Exchange Act Rule 17a-5 for broker-dealers that misallocate certain securities commission revenues on their FOCUS reports (as described below) until sixty days after the date NASDAQ begins operation as an exchange for non-NASDAQ listed securities and completes the integration of its systems to its Single Book execution system platform for those securities.

I. Request for Extension of Previously-Granted No-Action Relief Regarding NASDAQ-Listed Securities

In light of the delay in NASDAQ's completion of its systems integration for non-NASDAQ listed securities and consequent delay in becoming operational as a national securities exchange for trading those securities beyond December 31, 2006, we hereby request that the Division's previously-granted no-action relief regarding NASDAQ-listed securities be extended until a date that is sixty days after the date NASDAQ begins operation as an exchange for non-NASDAQ listed securities and completes the integration of its systems to its Single Book execution system platform for those securities.

Because firms were relying on all NASDAQ trades being exchange-listed trades by December 31, 2006, they may not have planned to be able to distinguish between NASDAQ-listed securities and non-NASDAQ listed securities after that date. Therefore, these firms may need additional time to make programming changes.

³ Letter from Mary Revell, Associate Vice President, The NASDAQ Stock Market, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation, SEC (December 29, 2006) ("NASDAQ December 2006 Letter").

We therefore request that the Division not recommend to the Commission enforcement action under Exchange Act Rule 17a-3 from December 31, 2006 to a date that is sixty days after the date NASDAQ begins operation as an exchange for non-NASDAQ listed securities and completes the integration of its systems to its Single Book execution system platform for those securities if a broker-dealer reflects, for transactions in NASDAQ-listed securities, (1) NASDAQ as an over-the-counter ("OTC") market instead of an exchange market, (2) NASDAQ securities as OTC securities instead of exchange-listed securities, and/or (3) a broker-dealer as a member of the NASD rather than as a member of NASDAQ (and vice versa) on books and records required under Exchange Act Rule 17a-3.

In addition, we request that the Division not recommend to the Commission enforcement action under Exchange Act Rule 17a-25 from December 31, 2006 to a date that is sixty days after the date NASDAQ begins operation as an exchange for non-NASDAQ listed securities and completes the integration of its systems to its Single Book execution system platform for those securities if a broker-dealer reflects NASDAQ as an OTC market instead of an exchange market and/or NASDAQ securities as OTC securities instead of exchange-listed securities in securities transaction information regarding NASDAQ-listed securities submitted to the Commission pursuant to Exchange Act Rule 17a-25.

II. Request for No-Action Relief Regarding Non-NASDAQ Listed Securities

Also because of the delay in NASDAQ's becoming operational as a national securities exchange for the trading of non-NASDAQ listed securities beyond December 31, 2006, we hereby request that the Division grant broker-dealers similar no-action relief regarding transactions in non-NASDAQ listed securities. You may recall that we mentioned the possible need for this relief in our July 28, 2006 letter to you.⁴

Specifically, we request that the Division not recommend to the Commission enforcement action under Exchange Act Rule 17a-3 from the date NASDAQ begins operation as an exchange for non-NASDAQ listed securities and completes the integration of its systems to its Single Book execution system platform for those securities until a date that is sixty days thereafter if a broker-dealer reflects, for transactions in non-NASDAQ listed securities, (1) NASDAQ as an OTC market instead of an exchange market, (2) the transaction as having occurred on an OTC market rather than an exchange market, and/or (3) a broker-dealer as a member of the NASD rather than as a member of NASDAQ on books and records required under Exchange Act Rule 17a-3.

⁴ See footnote 8 in SIA Letter, which states that "SIA member firms may require similar no-action relief for CTA Plan securities for a period after December 31, 2006 should NASDAQ's operation as a national securities exchange for these securities be unreasonably delayed."

In addition, we request that the Division not recommend to the Commission enforcement action under Exchange Act Rule 17a-25 from the date NASDAQ begins operation as an exchange for non-NASDAQ listed securities and completes the integration of its systems to its Single Book execution system platform for those securities until a date that is sixty days thereafter if a broker-dealer reflects, for transactions in non-NASDAQ listed securities, NASDAQ as an OTC market instead of an exchange market and/or the transaction as having occurred on an OTC market rather than an exchange market in securities transaction information submitted to the Commission pursuant to Exchange Act Rule 17a-25.

III. Request for No-Action Relief for Those Broker-Dealers Who May Be Ready to Implement Changes to Accommodate NASDAQ's Operating as an Exchange in Non-NASDAQ Listed Securities Prior to NASDAQ's Operation as an Exchange in Such Securities

Conversely, and notwithstanding the relief requested above in section II, some broker-dealers may be able to implement, in whole or in part, the necessary programming changes associated with the NASDAQ exchange conversion for non-NASDAQ listed securities prior to the completion of NASDAQ systems integration for such securities. Because system changes already may have been scheduled by some broker-dealers to coincide with the previously anticipated commencement of NASDAQ's operation as an exchange in such securities in Fall 2006, it may be difficult or imprudent for these broker-dealers to reschedule their implementation plans, particularly during the end-of-year period when technology freezes and staffing issues commonly are present.

As a consequence, we request that the Division not recommend to the Commission enforcement action under Exchange Act Rule 17a-3 from January 1, 2007 until the date that NASDAQ begins operation as an exchange for non-NASDAQ listed securities and completes the integration of its systems to its Single Book execution system platform for those securities if a broker-dealer reflects, for transactions in non-NASDAQ listed securities, (1) NASDAQ as an exchange market instead of an OTC market, (2) the transaction as having occurred on an exchange market rather than an OTC market, and/or (3) a broker-dealer as a member of NASDAQ rather than as a member of NASD on books and records required under Exchange Act Rule 17a-3.

In addition, we request that the Division not recommend to the Commission enforcement action under Exchange Act Rule 17a-25 from January 1, 2007 until the date that NASDAQ begins operation as an exchange for non-NASDAQ listed securities and completes the integration of its systems to its Single Book execution system platform for those securities if a broker-dealer reflects, for transactions in non-NASDAQ listed securities, NASDAQ as an exchange market instead of an OTC market and/or the transaction as having occurred on an exchange market rather than an OTC market in securities transaction information submitted to the Commission pursuant to Exchange Act Rule 17a-25.

IV. Request for No-Action Relief Regarding Misallocation of Certain Securities Commission Revenues on FOCUS Reports

Because of the amount and complexity of the programming changes that broker-dealers must make as a result of NASDAQ's conversion to a national securities exchange, compounded by the delay in NASDAQ's completion of its systems integration for non-NASDAQ listed securities and thus in becoming operational as an exchange for trading those securities, broker-dealers may inadvertently misallocate securities commission revenues generated by transactions in NASDAQ-listed and non-NASDAQ listed securities in the Statement of Income (Loss) section of the FOCUS Reports that they are required to submit to their designated examining authorities in accordance with Exchange Act Rule 17a-5.

Therefore, we request that the Division not recommend to the Commission enforcement action under Exchange Act Rule 17a-5 until sixty days after NASDAQ begins operation as an exchange for non-NASDAQ listed securities and completes the integration of its systems to its Single Book execution system platform for those securities if a broker-dealer misallocates certain securities commission revenues generated by transactions in NASDAQ-listed and non-NASDAQ listed securities on its FOCUS Reports submitted to its designated examining authority.

V. Conclusion

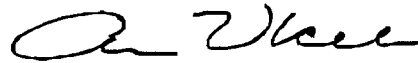
With respect to all of the relief requested above, broker-dealers either should maintain sufficient additional records to identify, as appropriate, that a given transaction was effected on either an OTC market or an exchange market, that the security is an OTC security or an exchange-listed security, and/or that the broker-dealer is either a member of NASD or NASDAQ (whichever is the case) or may rely on NASDAQ to access and obtain this information until the end of the relevant no-action relief period.⁵

We believe that allowing firms adequate time to modify and test their systems and coding to accurately indicate NASDAQ's new status as a national securities exchange, and allowing for the uncertainty of NASDAQ's completion date for its systems integration for non-NASDAQ listed securities and for its operating as an exchange for non-NASDAQ listed securities, are necessary steps in NASDAQ's smooth transition from being part of the OTC market to becoming a national securities exchange. Provision of the no-action relief requested above would greatly facilitate this transition and avoid exposing firms to unwarranted exposure for inadvertent inaccuracies in their books and records or information provided to the Commission and/or their designated examining authority.

⁵ Letter from Mary Revell, Associate Vice President, The NASDAQ Stock Market, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation, SEC (August 4, 2006), telephone conversation on November 15, 2006, and NASDAQ December 2006 Letter.

We very much appreciate your consideration of the above requests for no-action relief, and would be happy to answer any questions you might have in regard to these requests. Please contact the undersigned at 202.216.2000 should you have further questions.

Respectfully submitted on behalf of the
SIFMA NASDAQ Exchange Working
Group,



Ann Vlcek
Vice President and Associate General
Counsel
Securities Industry and Financial Markets
Association

cc: Chairman Christopher Cox, Securities and Exchange Commission
Commissioner Paul S. Atkins, Securities and Exchange Commission
Commissioner Roel C. Campos, Securities and Exchange Commission
Commissioner Annette L. Nazareth, Securities and Exchange Commission
Commissioner Kathleen L. Casey, Securities and Exchange Commission
Robert L.D. Colby, Securities and Exchange Commission
Elizabeth King, Securities and Exchange Commission
Bonnie L. Gauch, Securities and Exchange Commission
Karen Peterson, NASDAQ
Mary Revell, NASDAQ



THE NASDAQ STOCK MARKET
9600 BLACKWELL ROAD
ROCKVILLE, MD 20850

December 29, 2006

Michael A. Macchiaroli
Associate Director, Division of Market Regulation
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: No-Action Relief from SEC Rules 17a-3, 17a-25, and 17a-5

Dear Mr. Macchiaroli:

In connection with the commencement of the operation of The NASDAQ Stock Market LLC ("NASDAQ") as a national securities exchange trading the securities that it lists, the Securities and Exchange Commission ("SEC" or "Commission") has granted no-action relief concerning certain books and records requirements under SEC Rules 17a-3 and 17a-4 and certain securities transaction information required to be submitted to the Commission under SEC Rule 17a-25.¹ In response to the letter requesting relief,² the relief was granted for a temporary period extending until December 31, 2006. At the time the relief was requested, we believed that we would have become operational as a national securities exchange for trading non-NASDAQ listed securities and would have completed the integration of our systems on the Single Book platform prior to that date. In a letter dated December 29, 2006, the NASDAQ Exchange Working Group of the Securities Industry and Financial Markets Association ("SIFMA", formerly SIA) requested that the relief granted in the No-Action Letter be extended and modified and that the relief be extended until a date that is either sixty days after the date the NASDAQ Exchange begins operation as an exchange for non-NASDAQ exchange-listed securities or the date the NASDAQ Exchange begins such operation.³

¹ Letter from Michael A. Macchiaroli, Associate Director, SEC Division of Market Regulation, to Ann Vlcek, Vice President and Associate General Counsel, Securities Industry Association ("SIA") (July 31, 2006) ("No-Action Letter").

² Letter from Ann Vlcek, Vice President and Associate General Counsel, SIA, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation, SEC (July 28, 2006).

³ Letter from Ann Vlcek, Vice President and Associate General Counsel, SIFMA, to Michael A. Macchiaroli, Associate Director, Division of Market Regulation, SEC (December 29, 2006).

I would like to explain why the extension of that relief is required. While we hoped to complete systems integration by the end of 2006, there were some obstacles to meeting this target. For example, we are rapidly approaching the date when firms lock down their systems for the year. We must ensure that sufficient time is allowed for firms to make and test system changes in order to allow for a smooth implementation of Single Book for non-NASDAQ listed securities. We also must ensure that there is sufficient time to make and test changes to downstream regulatory systems. Because there was not sufficient time to complete systems integration for non-NASDAQ listed securities prior to the firm system lock-down date in mid-December, we announced a target date of mid-January 2007 for commencing the integration. (See Head Trader Alert 2006-028, available at <http://www.nasdaqtrader.com/Trader/News/headtraderalerts/hta2006-208.stm>.)

SIFMA has requested that the relief be extended beyond the date when completion of NASDAQ systems integration is complete in order to allow firms a relatively short period of time to modify and test any necessary system changes following the completion of the integration. We agree with SIFMA that extension of the no-action relief for this additional limited period of time will not frustrate the purposes of SEC Rules 17a-3, 17a-25, and 17a-5.

Also, in a letter dated August 4, 2006, NASDAQ stated that broker-dealers may rely on NASDAQ to access and obtain information concerning whether a security is an exchange-listed security and whether a broker-dealer is a NASD or NASDAQ member, should it be required for the purpose of regulatory examinations in the future, until the end of the no-action relief period on December 31, 2006. NASDAQ proposes to extend this reliance until a date that is sixty days after the date the NASDAQ Exchange begins operation as an exchange for non-NASDAQ exchange-listed securities and completes the integration of its systems to the Single Book execution system platform for those securities. As a result, broker-dealers may rely on NASDAQ to access and obtain information to identify that a transaction is effected on an OTC market or an exchange market, that a security is an OTC security or an exchange-listed security, and/or that a broker-dealer is a member of NASD or NASDAQ, until the end of the relevant no-action relief period.

If you have any questions about this request, please contact me at 301.978.8265.

Sincerely,



Mary Revell
Associate Vice President