



**Securities Industry Association**

120 Broadway, New York, NY 10271-0080, (212) 608-1500, Fax (212) 608-1604  
1401 Eye Street, NW, Washington, DC 20005-2225, (202) 296-9410, Fax (202) 296-9775  
info@sia.com, <http://www.sia.com>

July 24, 2001

By Hand and Via Electronic Mail

Jonathan G. Katz  
Secretary  
U.S. Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549-0609

Re: The Nasdaq Stock Market, Inc.; Notice of Filing of Application for  
Registration as a National Securities Exchange Under Section 6 of  
the Securities Exchange Act of 1934, Release No. 34-44396, File  
No. 10-131

Dear Mr. Katz:

The Securities Industry Association ("SIA")<sup>1</sup> is submitting this letter on behalf of its member firms to request that the U.S. Securities and Exchange Commission ("SEC" or "Commission") seek the consent of The Nasdaq Stock Market, Inc. ("Nasdaq") to delay the Commission action date until December 17, 2001 for Nasdaq's application to register as a national securities exchange ("Form 1") under Section 6 of the Securities Exchange Act of 1934 ("Exchange Act"), and grant an extension of the comment period for Form 1 from July 30, 2001 until October 31, 2001. The Commission issued notice of Nasdaq's filing of Form 1 on June 7, 2001,<sup>2</sup> and requested that public comments be submitted by July 30, 2001. As it now stands, the Commission must take action on the application by September 11, 2001 (referred to herein as the "action date" for Form 1), ninety days after publication of the notice in the Federal Register.

---

<sup>1</sup> The Securities Industry Association brings together the shared interests of nearly 700 securities firms to accomplish common goals. SIA member firms (including investment banks, broker-dealers, and mutual fund companies) are active in all U.S. and foreign markets and in all phases of corporate and public finance. The U.S. securities industry manages the accounts of nearly 80 million investors directly and indirectly through corporate, thrift, and pension plans. In the year 2000, the industry generated \$314 billion of revenue directly in the U.S. economy and an additional \$110 billion overseas. Securities firms employ approximately 770,000 individuals in the U.S. (More information about SIA is available on its home page: <http://www.sia.com>.)

<sup>2</sup> Securities Exchange Act Release No. 44396 (June 7, 2001). Nasdaq initially filed Form 1 with the Commission on November 9, 2001; however, as the SEC explains in this release, "Exhibits A and C...were incomplete, and therefore on March 15, 2001, Nasdaq submitted to the Commission revised Exhibits A and C to address the deficiencies. As a result, Nasdaq's Form 1 was completed and officially filed with the Commission on March 15, 2001."

The SIA recognizes that the Exchange Act mandates that the Commission take action on an application for registration as a national securities exchange within ninety days of publishing notice of the application, and that an extension of this time period must be agreed to by the applicant. Specifically, Section 6(a) of the Exchange Act states that an “exchange may be registered as a national securities exchange under the terms and conditions hereinafter provided in this section and in accordance with the provisions of Section 19(a) of this title...” Section 19(a) of the Exchange Act states that the “...Commission shall, upon filing of an application for registration as a national securities exchange...pursuant to Section 6...publish notice of the filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application. Within ninety days of the date of publication of such notice (or within such longer period as to which the applicant consents), the Commission shall...by order grant such registration, or...institute proceedings to determine whether registration should be denied...”

SIA member firms believe that Nasdaq’s Form 1 requires a thorough review, but find it difficult to perform such a review in a forty-five day comment period, particularly one that spans the summer months. More specifically, the SIA is requesting that the Commission seek a delay in the action date for Form 1 and grant an extension of the forty-five day public comment period for the following reasons:

(1) Form 1 is an unusually large filing that will require a considerable amount of time and effort on the part of SIA member firms’ staffs to review (the complete filing is comprised of some eight volumes of material). Form 1 represents a major restructuring of one of the largest markets in the world, and thereby has considerable implications. We understand that Nasdaq relied in large part on the National Association of Securities Dealers, Inc. (“NASD”) rulebook in drafting its proposed rulebook, and that many of the changes may not be substantive. Member firm staffs, however, will not know initially which of the changes are substantive and which are not, nor will they be able to resolve any broader regulatory questions they might have, until they review the entire filing. Although we recognize that Nasdaq is not required to provide a detailed explanation of the content of its Form 1 application, we note that, as a result of not having such a description or other tools to facilitate the review of this filing and especially given the length of the filing, the review process is necessarily a more time-consuming process for member firms to undertake. This is too important of a filing to not provide an appropriate opportunity for member firms and others to carefully review the entire application.

(2) SIA member firms believe that it is integral to their review of Form 1 that they also review at the same time the plans of the NASD for the future operation of a quotation and transaction reporting facility for its members that transact business in the residual over-the-counter (“OTC”) market.<sup>3</sup> As you know, the NASD has not yet filed

---

<sup>3</sup> The NASD agreed to provide such a facility for the residual OTC market when the Commission approved SuperMontage, Nasdaq’s new trading system (and before the filing of Nasdaq’s completed Form 1 on March 15, 2001). *See* Letter to Arthur Levitt, Chairman, Securities and Exchange Commission, from Robert Glauber, Chief Executive Officer and President, National Association of Securities Dealers, Inc.,

these plans with the Commission. We note that the Commission appears to agree with the importance of reviewing any such NASD filing in the context of reviewing Form 1 in that, in Section II of its release issuing notice of Form 1, the Commission stated that "...while the Form 1 contemplates that Nasdaq will be an exchange trading Nasdaq National Market securities and Nasdaq SmallCap securities, the future operation of the Over-the-Counter Bulletin Board must be addressed...Nasdaq's exchange registration has implications for the NASD which, as a national securities association, will continue to be required to collect bids, offers and quotation sizes for those entities seeking to trade listed securities, including Nasdaq securities, otherwise than on a national securities exchange. The Commission notes that the NASD's quotation and transaction reporting facility must be operational upon Nasdaq's exchange registration." SIA member firms believe that they cannot adequately comment on Nasdaq's Form 1 until they also have had an opportunity to review the NASD's filing detailing the operation of and rules for the facility for the residual OTC market. In this regard, SIA member firms expect that the NASD's filing will be submitted to the SEC and published for comment in the near future, thus affording SIA member firms and other members of the public adequate time to review the NASD filing during any Form 1 comment period.

(3) SIA member firm operational and compliance staffs have been particularly challenged this year with many market structure and operational changes; their efforts in this regard have included extensive preparations for several major firm mergers, the implementation of decimals, SuperSoes, and compliance with the new order execution and routing disclosure rules. These efforts are consuming a considerable amount of funds and staff time, making it nearly impossible for firms to perform a quick review of the voluminous Form 1 at this time.

(4) Finally, the prescribed forty-five day public comment period for Form 1 extends over the summer months when many members of the staffs of all of the affected constituencies (including the SEC, Nasdaq, and SIA member firms) usually take their vacations, thus substantially impairing the opportunity for discussion among these entities and the ability to seek further clarification if necessary on the filing.

The SIA, therefore, respectfully requests on behalf of its member firms that the Commission seek Nasdaq's consent to delay the action date for Nasdaq's Form 1 until December 17, 2001, and grant an extension of the public comment period from July 30, 2001 until October 31, 2001. In the event that the NASD does not file with the Commission in the near future its plans for the quotation and transaction reporting facility for the residual OTC market, the SIA anticipates that a further delay in the Form 1 action date and extension of the comment period may be necessary in that review of such NASD plans is considered by SIA member firms to be material to their review of the Form 1.

The SIA appreciates the efforts of the Commission staff in reviewing the Form 1 and publishing it for public comment. SIA member firms believe that, for the reasons set forth above, it is not unreasonable to seek a delay in the Commission's action date for

this application and a three month extension in the comment period. Extending the public comment period for another three months is considered critical to SIA member firms' ability to adequately review the Form 1 and to provide comments. The SIA believes that this type of thorough review benefits the Commission's consideration of this application, and is therefore necessary or appropriate in the public interest and consistent with the protection of investors.

If we can provide further information or clarification of the points made in this letter, please contact me or Ann Vlcek, Assistant General Counsel, at 202-296-9410.

Sincerely,

Marc E. Lackritz  
President

cc: Annette L. Nazareth, Director, Division of Market Regulation, SEC  
Robert L. D. Colby, Deputy Director, Division of Market Regulation, SEC  
Elizabeth King, Associate Director, Division of Market Regulation, SEC  
Rebekah Liu, Special Counsel, Division of Market Regulation, SEC