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January 17, 2007

Ms. Nancy Morris  
Secretary  
Securities and Exchange Commission  
100 F Street, N.E.  
Washington, D.C. 20549

**Re: Release No. 34-55011; File No. SR-NYSEArca-2006-21**

Dear Ms. Morris:

The International Securities Exchange, LLC ("ISE") is pleased to provide this statement in opposition to the petition ("Petition") of NetCoalition asking the Commission to review and set aside the action of the Division of Market Regulation ("Division") in approving the above-referenced rule change ("Filing") of NYSEArca, Inc. ("NYSEArca").<sup>1</sup> The ISE is a national securities exchange registered with the Commission under Section 6 of the Securities Exchange Act of 1934, as amended (the "Act"). We also are a for-profit company listed and traded on the New York Stock Exchange. The ISE provides a fully-automated market place for the trading of both equity securities and options. Starting operations only in 2000, we have grown to be the largest equity options exchange in the world. In 2006 we began the operation of our equities market.

As a fully-electronic market, the ISE generates, collects and stores large amounts of market data. Part of our corporate strategy is to develop and sell market data offerings that investors and other market participants can use for trading and market analysis purposes. We believe that granting NetCoalition's request: will hinder the development of these types of new market data products; will stifle innovation in the market place; and ultimately will cause significant harm to investors. On the other hand, we believe that the Division's approval of NYSEArca's proposal displayed the careful balancing necessary both to encourage innovation and to protect investors. In this regard, we believe that the Division's approval of the Filing was fully consistent with all legal requirements and we urge the Commission to reject the Petition.

There are two regulatory provisions applicable to the Commission's analysis of the Petition: the rules governing the collection and display of market data; and the rules governing the manner in which exchanges can charge for such data. With respect to the data itself, Rules 601 and 602 under the Act require exchanges to provide last sale and best-bid-and-offer information to the investing public in a consolidated format. Pursuant to these requirements, all exchanges disseminate such data through Commission-approved national market system plans, such as the plans filed by the Consolidated Tape Association and the Options Price Reporting Authority. For many years, this basic data was the only data available to persons not present on an exchange floor.

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<sup>1</sup> Release No. 34-54597 (October 12, 2006); 71 F.R. 62029 (October 20, 2006) ("Approval Order").

As exchanges have become more electronic, and as technological advancements have made possible efficient and inexpensive ways to provide data to investors – such as through the facilities operated by the members of NetCoalition<sup>2</sup> – the exchanges have been exploring ways to provide the investing public with more information. However, there is no regulatory requirement for any exchange to provide the public with this information. Thus, these new products are entirely dependent on exchanges having financial or other business incentives to invest in their development. The "NYSE Arca Data" that is the subject of the Filing and the Petition, such as the compilation of resting limit orders, is exactly this sort of product. If exchanges cannot receive a fair return on their investment, these products will not exist.

We do not mean to imply that exchanges are free to charge what they please for market data products. The Act governs exchange fees, with Section 6(b)(4) providing that a national securities exchange must have rules that "provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities." There are three key aspects to this requirement: fees must be "reasonable;" there must be an "equitable allocation" of such fees; and there is the recognition that the fees can be charged to members, issuers and "other persons" using an exchange's facilities.

Analyzing these three aspects of Section 6(b)(4), we first note the explicit Congressional determination that "other persons" – that is, persons, other than issuers or members – may be using an exchange's facilities and that exchanges may charge such persons for such use. Some exchanges, but not the ISE, charge for listings, and thus can impose fees on issuers. For exchanges such as the ISE, there are only two general sources of revenues: member-related fees (primarily transaction charges); and market data fees, charged to subscribers of such data. Thus, in determining what is an "equitable allocation" of "reasonable" fees, for most exchanges there are only two relevant classes of persons: members and data subscribers.

Focusing on the "equitable" and "reasonable" criteria, the Petition states that the filing failed to supply data necessary to analyze NYSE Arca's fees, focusing primarily on whether the fees cover NYSE Arca's "costs." The Petition implies that the only basis for determining whether fees are "reasonable" is whether they are cost-related and then quotes extensively from one Commission release on the subject of costs. However, the Petition selects limited quotations, out of context, from a release dealing with "core" market data products, such as quotation information that an exchange must provide to a National Market System network, and not value-added services such as NYSE Arca Data. The Petition concludes this argument with the blanket statement that the Division did not properly consider costs in approving the Filing and that the fees are thus inequitable and unreasonable. The rest of the Petition then makes public policy arguments in favor of broad dissemination of information over the Internet.

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<sup>2</sup> NetCoalition describes itself as a "public policy voice for some of the world's most innovative companies on the Internet." It lists its trustees as including CNET Networks, Bloomberg, L.P., Google, IAC/Interactive Corp and Yahoo!. Petition at note 1.

Applying NetCoalition's proposed strict cost-based fee analysis to every exchange market data rule filing is unworkable and certainly is not required under the Act. Rather, the Division properly applied its traditional analytical approach to the Filing when comparing the proposed fees to market data fees that market participants and investors pay for similar products. Nor did the Division ignore costs, as NetCoalition implies. Rather, the Division properly noted that NYSE Arca incurred costs to enhance its technology to provide this service. Taken in their entirety, the Division applied the proper statutory standard – reasonableness – and approved the proposed fee. The Division did not apply, and the Act does not require it to apply, the Petition's strict cost-based standard.

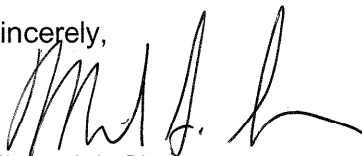
The bulk of the Petition contains supposed public policy arguments that NYSE Arca is extracting "monopoly pricing" that will impede the use of "the Internet's revolutionary, universally accessible information forum" for securities-pricing purposes. By way of example, the Petition notes that consumers can find and compare millions of facts "from airline fares to restaurants, from sports scores to a seemingly infinite number of goods and services" over the Internet.

We have no objection to business models where service providers such as airlines or restaurants freely disseminate their prices over the internet. We can see why the members of NetCoalition approve of such business models, since they can collect such information (for free) and profit from it, either by charging for access to such information or by selling advertising space related to such information. However, exchanges have not chosen that business model, nor is there a statutory requirement that they do so.

The Petition's "monopoly pricing" argument is similarly off-base. Of course an exchange has a monopoly on the information that is unique to its market. But that does not mean that such information has value. In this regard, the Petition totally ignores market reality and market discipline. If any exchange attempts to charge excessive fees, there simply will not be buyers for such products.

Simply stated, NetCoalition is asking for governmental price regulation in order to enhance their profitability. There is no requirement in the securities laws or elsewhere that exchanges adopt a business model that will facilitate the profitability of NetCoalition's members. Rather, the exchanges have chosen a model that encourages them to develop innovative market data products that benefit the investing public. NYSE Arca amply demonstrated that its proposed pricing was reasonable. The Division properly agreed. Therefore, the Commission should dismiss the Petition.

Sincerely,



Michael J. Simon  
Secretary

cc: Erik R. Sirri  
Robert L.D. Colby