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September 15, 2010

Ms. Elizabeth M. Murphy  
Secretary  
US Securities and Exchange Commission  
100 F Street NE  
Washington, DC 20549

***Re: Comments to FINRA Proposal to Expand the Order Audit Trail System to All NMS Stocks (Release No. 34-62739; File No. SR-FINRA-2010-044)***

Dear Ms. Murphy:

The NASDAQ OMX Group, Inc. (“NASDAQ”) appreciates the opportunity to comment on the proposal by the Financial Regulatory Authority, Inc. (“FINRA”) to amend the Order Audit Trail System (“OATS”) rules to extend the recording and reporting requirements to all NMS stocks as defined in Rule 600(b)(47) of Regulation NMS and to make certain other changes. While NASDAQ generally supports improvements to the quality of regulatory information, we believe that this proposal must be viewed in the context of the Commission’s outstanding proposals for a consolidated audit trail that would provide comprehensive information to regulators across all markets.<sup>1</sup> We believe that FINRA’s proposal to expand OATS at the same time the industry is preparing for the Commission to mandate a new and more comprehensive audit trail raises important questions that must be addressed before the Commission can determine that FINRA’s proposal is in the public interest.

As noted in our comment letter to the Commission Proposal, the implementation of a comprehensive and state-of-the-art consolidated audit trail is critical to effective regulation in a fragmented market.<sup>2</sup> Regulators are too often hindered by limited information and outdated systems that impede the quality of our regulatory programs. The Commission Proposal is a significant step in the right direction. Moreover, NASDAQ and a number of other commenters believe that the Commission’s timetable for implementation is realistic and would result in full

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<sup>1</sup> See Securities Exchange Act Release No. 62174 (May 26, 2010), 75 FR 32556 (June 8, 2010) (File No. S7-11-10) (“Commission Proposal”).

<sup>2</sup> See Comment Letter from Joan Conley, Senior Vice President and Corporate Secretary, NASDAQ, to Elizabeth Murphy, Secretary, Commission, dated August 12, 2010.

operation within two years. The Commission Proposal also contained extensive analysis of existing audit trails including OATS. The Commission preliminarily determined that existing audit trail such as OATS are limited in scope and effectiveness and unlikely even with “retrofitting” to fulfill the needs for a consolidated audit trail.<sup>3</sup>

FINRA now proposes to extend OATS reporting obligations, which are currently limited to the reporting of transaction information for OTC equity securities (non-NMS stocks) and securities listed on NASDAQ, to all NMS securities including those listed on other markets like NYSE. This follows FINRA’s comment letter on the Commission Proposal advocating the adoption of OATS as the basis of the consolidated audit trail.<sup>4</sup> We believe the Commission must ask some important questions before approving FINRA’s OATS proposal given its timing and the risk to the Commission’s goal of comprehensive surveillance. For instance, can we afford the cost and complexity of extending OATS and building a new consolidated audit trail? Indeed, FINRA’s competitive positioning of OATS as the default choice for the consolidated audit trail may deter innovative technology firms from designing a more effective consolidated audit trail. Questions for FINRA include:

- What is the cost to the financial industry of extending OATS to all NMS securities?
- Is this expenditure advisable given the Commission’s preliminary determination to require a new audit trail system with different functionality and scope?
- Is a six-month implementation period reasonable?
- Even if it is, does it make sense to devote resources to a six-month roll-out of OATS when a consolidated audit trail could be operational in less than two years?
- What is the anticipated use of this new data given the limited use of OATS data in existing market surveillance patterns?
- While FINRA proposes to begin collecting this new data within six months, how quickly can patterns be updated to actually use this new information?

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<sup>3</sup> Commission Proposal at 34.

<sup>4</sup> Comment Letter from Marcia Asquith, Secretary, FINRA, to Elizabeth Murphy, Secretary, Commission, dated August 9, 2010, at 6.

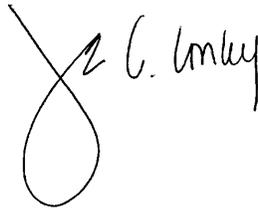
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Answers to these questions will assist the Commission in determining whether this proposal provides meaningful benefit to regulation or whether investors would be better served by the Commission proceeding with its original plans for a new and comprehensive audit trail.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joan C. Conley". The signature is stylized, with a large loop at the bottom and a long, sweeping stroke that curves back up to the right.

Joan C. Conley

cc: The Hon. Mary L. Schapiro, Chairman  
The Hon. Kathleen L. Casey, Commissioner  
The Hon. Elisse B. Walter, Commissioner  
The Hon. Luis A. Aguilar, Commissioner  
The Hon. Troy A. Paredes, Commissioner  
Robert W. Cook, Director, Division of Trading and Markets  
James A. Brigagliano, Deputy Director, Division of Trading and Markets  
David Shillman, Associate Director, Division of Trading and Markets