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Filed Electronically

Nancy M. Morris
Secretary
Securities and Exchange Commission
Station Place
100 F Street, NE
Washington, DC 20549-1090

Re: File No. SR-NASDAQ-2006-040, Amendment 3

Dear Ms. Morris:

We write on behalf of PR Newswire Association LLC ("PR Newswire") in further response to NASDAQ's Amendment No. 3 to the above-captioned proposed rule, SR-NASDAQ-2006-040 (the "Proposed Rule"), filed on January 16, 2007. As noted in our prior correspondence of January 23, 2007, asking you to deny accelerated consideration of Amendment No. 3, PR Newswire continues to have serious concerns regarding the Proposed Rule and opposes its implementation.

Amendment No. 3 has removed certain non-exchange for-profit services, including news wire services, that NASDAQ previously offered as partial justification for its hefty proposed fee increase.[1] NASDAQ has made no reduction in the amount of the proposed listing fee increase, however, and now says that it separately will offer the previously bundled services "for free" to NASDAQ-listed and other companies. Amendment No. 3 should be rejected because: (1) the proposal to increase listing fees by the same amount as originally proposed, without the provision of additional services, is excessive and unreasonable, and therefore prohibited by the Exchange Act of 1934 ("Exchange Act"); and (2) the transparent attempt to raise fees in order to subsidize NASDAQ's non-regulatory commercial functions is improper, as the Commission has already recognized.

[1] The initial version of the Proposed Rule stated that "[t]he change in fees largely reflects the costs of providing issuer services and will allow enhancements to the services offered to NASDAQ listed companies. Issuers listed on NASDAQ will receive a suite of products and services intended to assist companies with compliance functions, shareholder communications, and other corporate objectives." Proposed Rule at pp. 10-11.

The Removal of Services Previously Offered As Justification For NASDAQ's Fee Increase Warrants a Corresponding Reduction in the Proposed Increase.

In the prior version of the Proposed Rule, NASDAQ offered as partial justification for its proposal to substantially increase its listing fees its plan to offer certain non-exchange products and services, including commercial news wire and communications services, noting that "there will be something of value to all companies."[2] PR Newswire, many listed companies, and other interested parties strongly objected to NASDAQ's illegal attempt to include non-exchange for-profit services in the cost of its listing fees. NASDAQ thus withdrew its initial proposal and issued Amendment No. 3, which eliminates the non-exchange services as partial justification for the proposed listing fee increase. Specifically, Amendment No. 3 removes "the proposed service that converts the annual report and proxy material into a dynamic online document for use by current and potential shareholders, the four audio webcasts, the four press releases, the four Form 8-K (or 6-K) filings, and the customized report to help analyze exposure to securities litigation."[3] Amendment No. 3 is improper, however, because although a justification for the listing fees has been removed, NASDAQ proposes no corresponding decrease in the amount of its proposed fee increase.

If listed companies will no longer be receiving the non-exchange services that constituted the "something of value" that partially justified the proposed listing fee increase, the fee must be reduced accordingly. Maintaining the proposed fee increase at its prior level, despite the removal of these purportedly valuable services, constitutes an attempt by NASDAQ to impose excessive and unreasonable fees upon its listed companies, in direct violation of the Exchange Act, which mandates that the fees charged by NASDAQ be "reasonable." See Exchange Act Section 6(b)(4), 15 U.S.C. §78f(b)(4).[4]

NASDAQ now contends (without explanation) that it unilaterally "has determined not to rely on these services as a justification for the proposed fee increase,"[5] but it offers no meaningful explanation as to why its substantial proposed fee increase should remain unchanged, other than vaguely asserting that it "believes that the other market enhancements described above, fully support the proposed fees."[6] These "market enhancements" already were taken into account in the prior version of the Proposed Rule and, therefore, do not add new value to listed companies to compensate them for the loss of the non-exchange for-

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[2] See Proposed Rule, Amendment 2, at p. 15.

[3] See Proposed Rule, Amendment 3, at p. 3.

[4] Section 6(b)(4) requires that the SRO rules provide for the "equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities."

[5] See Proposed Rule, Amendment 3, at p. 6.

[6] Id.

profit services NASDAQ proposes to eliminate. The "value" of the package offered by NASDAQ has been reduced, but the proposed listing fee increase has not. The proposed fee increase is therefore unreasonable and excessive to the extent NASDAQ has failed to take this reduction in value into account.

NASDAQ's Latest Actions Demonstrate its Continued Effort to Subsidize its Non-Regulatory Commercial Enterprises Through Mandatory Regulatory Fees.

Excessive and unreasonable fees like those proposed here are unlawful under the Exchange Act regardless of how they will be used. A further troubling issue with the Proposed Rule, however, is that these excessive fees will be used to subsidize NASDAQ's non-exchange-related commercial activities.

As noted in PR Newswire's December 11, 2006, comment letter regarding the prior version of the Proposed Rule, it is no coincidence that NASDAQ's original proposal to charge listed companies for non-exchange news wire services came on the heels of its September 2006 acquisition of PrimeZone Media Network ("PrimeZone"), a news wire services provider. NASDAQ's motives are transparent. On the one hand, NASDAQ intends to charge its listed customers an excessively high listing fee, without reducing that fee to take into account the removal of some of the non-exchange for-profit services, including news wire services, it previously offered as partial justification for the increase. At the same time, NASDAQ now claims that it will offer these services for "free."[7] NASDAQ's intent (or, at the very least, its ability) to use the excess listing fees to subsidize these "free" offerings is apparent. Notwithstanding Amendment No. 3, NASDAQ still seeks to achieve the illicit goal of its original proposal – to build its new subsidiary's market share on the backs of the companies that list with NASDAQ.

Moreover, even if the proposed fee increase were not excessive, NASDAQ's use of its regulatory fees to subsidize its separate non-exchange-related commercial enterprises is improper and raises troubling issues. In fact, the potential ability of a self-regulatory organization ("SRO") to use its regulatory power and regulatory fees to promote its own profitability has been an issue of concern to the Commission for some time. In 2004, the Commission issued a proposed rule (the "Proposed Rule on Fair Administration and Governance")[8] and a concept release (the "Concept Release")[9] expressing this concern and

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[7] See Proposed Rule, Amendment 3 at p. 3, fn. 2 and p. 6, fn. 7.

[8] See *Fair Administration and Governance of Self-Regulatory Organizations; Disclosure and Regulatory Reporting by Self-Regulatory Organizations; Recordkeeping Requirements for Self-Regulatory Organizations; Ownership and Voting Limitations for Members of Self-Regulatory Organizations; Ownership Reporting Requirements for Members of Self-Regulatory Organizations; Listing and trading of Affiliated Securities by a Self-Regulatory Organization*, Exchange Act Release No. 34-50699 (Nov. 18, 2004); 69 FR 71126 (Dec. 8, 2004).

noting the inherent conflict between the for-profit business model of certain SROs and their regulatory activities. The Commission expressed a concern "that SROs may put their commercial interests ahead of their responsibilities as regulators."[10]

The Proposed Rule on Fair Administration and Governance currently pending before the Commission goes to the very heart of the conflict of interest revealed by NASDAQ's actions. In that proposed rule, the Commission proposes a requirement that "an exchange or association . . . direct monies collected from regulatory fees, fines or penalties ("regulatory funds") *exclusively to fund the regulatory operations and other programs of the exchange or association related to its regulatory responsibilities*, and to keep such books and records as are necessary to evidence compliance with this requirement."[11] Such a requirement is intended to ensure that "the SRO is not abusing its regulatory authority"[12] and to diminish "the potential for an exchange or association to use its authority to raise regulatory funds for the purpose of benefiting its shareholders."[13] Thus, NASDAQ's attempt to use regulatory fees to subsidize its non-exchange for-profit activities would be improper, even if the proposed fee increase were not excessive.

In sum, the Proposed Rule, even in its amended form, should be rejected. The proposed fee increase does not take into account that Amendment No. 3 eliminates services that assertedly supported a portion of the fee increase and, thus, constitutes an excessive and unreasonable fee prohibited by the Exchange Act. Moreover, NASDAQ's continued anti-competitive intent to use these excessive fees to subsidize its non-exchange-related activities, including its subsidiary's efforts to increase its market share in the news wire services industry, is an attempt to frustrate the Commission's goal of disallowing the use of regulatory fees for non-regulatory purposes.

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[9] *Concept Release Concerning Self-Regulation*, Exchange Act Release No. 34-50700 (Nov. 18, 2004); 69 FR 71256 (Dec. 8, 2004).

[10] See Proposed Rule on Fair Administration and Governance, Section IB(4).

[11] See Proposed Rule on Fair Administration and Governance, Section IIB(8)(b) (emphasis added). The Proposed Rule on Fair Administration and Governance had also made clear that "[t]he scope of the categories of regulatory funds included in this requirement, as well as the limitation on use of such funds, is intended to be broad." Section IIB(8)(b).

[12] Id. at Section XA(7)(b).

[13] Id. at Section XA(1). In the Concept Release, the Commission reiterated its concern regarding the possibility of the profit motive of a shareholder-owned SRO detracting from proper self-regulation and the means by which restricting use of regulatory operations revenue could serve as a solution. S7-40-04, Section IVA(1).

Thank you for your consideration. If you have any questions, please contact the undersigned.

Sincerely,

Marc R. Paul

Margaret R. Blake

cc: David B. Armon
Sherri Felt Dratfield, Esq.
Carl Hampe, Esq.
David J. Laing, Esq.

JAS/it