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PR Newswire
United Business Media

November 3, 2006

David B. Armon
Chief Operating Officer

Arnold Golub
Associate General Counsel
NASDAQ Stock Market
9600 Blackwell Road
Rockville, MD 20850

Re: Amended File No. SR-NASDAQ-2006-040

Dear Mr. Golub:

We have read the amended proposed rule filing, SR-NASDAQ-2006-040, dated October 31, 2006, (the "Amended Proposed Rule" or "Amended Filing")¹ and anticipate providing additional comments thereon shortly under separate cover.

We are writing in this instance to voice concern over the failure of NASDAQ to provide information necessary to make an initial assessment of the Amended Proposed Rule's validity under the relevant sections of the Securities Exchange Act of 1934 ("Act").² As a result, we believe further amendments are needed before the Division of Market Regulation proceeds with publication of the Amended Proposed Rule.

I. Introduction

A. Cost Allocation

We previously set out our numerous objections to the Proposed Rule in a letter dated October 13, 2006 ("Letter").³ However, the issue of immediate concern, and the focus of this letter, is the failure on NASDAQ's part to address the specific allocation of the

¹ We understand Amendment #1, dated October 30, 2006, is superseded in its entirety by Amendment #2, dated October 31, 2006. Our comments, therefore, pertain only to the Proposed Rule as amended by Amendment #2.

² See Exchange Act Sections 6(b)(4) and 6(b)(5); 15 U.S.C. 78f(b)(4) and (b)(5), setting out NASDAQ's obligation to establish and maintain rules that, among other things, provide for the equitable allocation of reasonable fees among its users, and promote just and equitable principles of trade, respectively.

³ See Letter, dated October 13, 2006, to Arnold Golub, Associate General Counsel, NASDAQ Stock Market, from David Armon, Chief Operating Officer, PR Newswire.

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listing fees that are proposed to be charged among the bundled services to be provided. Our Letter noted that this information is imperative for issuers to fully understand the impact of the Proposed Rule. We believe that this is still the case. That is, it is impossible for NASDAQ to “provide for the equitable allocation of reasonable dues, fees and other charges” among users of its facilities when there is absolutely no indication of how those fees are being allocated among the services being provided.⁴ As we noted in our letter, “without knowing precisely what one is paying for, it is difficult to conclude that the standard established by the Act is being upheld.”⁵

As a self-regulatory organization (“SRO”), NASDAQ has an implicit obligation to be transparent regarding its operations and fee structure – particularly with how those fees are allocated to members and issuers.⁶ Yet when PR Newswire requested information about the allocation of the new listing fees among the suite of services being provided, NASDAQ used its position as a public company to refuse such information. Specifically, NASDAQ referred interested persons to their periodic reports, indicating that such reports “will identify the sources of Nasdaq’s revenues consistent with the requirements for those reports and U.S. generally accepted accounting practice.”⁷ This evasive response is especially unacceptable from an SRO tasked with overseeing the disclosure obligations of its underlying issuers.

As anyone familiar with public company financial statements knows, detailed information regarding the allocation of fees among bundled services is typically not included in a public company’s financial statements. U.S. generally accepted accounting principles do not require that level of detail, and NASDAQ is being disingenuous in trying to imply otherwise. In addition, even if such information were included in NASDAQ’s financial statements, it clearly would not be available in time for the Division’s consideration of the Amended Proposed Rule. NASDAQ’s deliberate

⁴ Exchange Act Section 6(b)(4); 15 U.S.C. 78f(b)(4).

⁵ See PR Newswire Letter at p. 3.

⁶ As an SRO, NASDAQ is obligated to file with the Commission all proposed rule changes with respect to changes in its operations and fees. The Division of Market Regulation (“Division”), on behalf of the Commission, is tasked with conducting a public comment process to determine whether the proposed rule changes are consistent with NASDAQ’s obligations under, among others, Exchange Act Sections 6(b)(4) and 6(b)(5); see footnote 2, supra.

⁷ See Amended Proposed Rule at footnote 21.

avoidance of providing the information most relevant to considering the Amended Proposed Rule should raise a red flag to issuers and Division staff in their review.

B. Ongoing and Additional Issues of Concern

As noted above, we are reviewing the Amended Filing in order to provide additional comments on a number of issues that remain unaddressed or on which we believe further information is needed. In our earlier Letter, our comments focused on a number of issues related to the bundling of services and the provision of those services as part of an overall package to issuers as part of their listing fees. We continue to assert the points raised in the Letter -- for example,

- that the Amended Proposed Rule is anticompetitive and places NASDAQ's wholly owned subsidiary, PrimeZone Media Network ("PrimeZone"), at an unfair advantage with respect to news dissemination services provided to NASDAQ issuers,⁸ and
- that the Amended Proposed Rule places NASDAQ in a conflict of interest between its role as a regulator of NASDAQ issuers and its role as the for-profit owner of a news distribution provider through which NASDAQ issuers must pay to obtain disclosure services.

In addition, we believe issues related to the inefficiencies and impracticalities of the proposed services must be clarified. Specifically, further clarification is needed to understand

- precisely how NASDAQ plans to offer the "incidental" services in a way that will fairly enhance competition in the news dissemination arena,⁹ and

⁸ We believe the Amended Proposed Rule does not uphold NASDAQ's obligation under Exchange Act Section 6(b)(5), to establish rules that "promote just and equitable principles of trade" and "to foster cooperation and coordination with persons engaged in . . . processing information with respect to . . . transactions in securities." We will address this issue further in a separate letter.

⁹ At page 19-20 of the Amended Proposed Rule, NASDAQ suggests that in the current market, where all players freely compete, PR Newswire and BusinessWire "own" the marketplace and are, in effect, a monopoly. NASDAQ further claims that the forced use of PrimeZone for news dissemination will enhance competition among the current providers, which already include PrimeZone. We disagree with these statements. PR Newswire and BusinessWire are completely *separate* entities that compete aggressively with each other (and with other parties such as Market Wire), thereby forcing a healthy competitive

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- what, if any, fees will apply when, for example, an issuer exceeds the 500-word limit in a press release issued through PrimeZone or an issuer wishes to send a press release beyond the initial four press releases provided, or how an investor will access vital financial tables of an issuer (and at what cost) when receiving a press release through PrimeZone.

As noted above, we will further address these and other issues in a separate letter.

II. Request

We believe that, procedurally, this Amended Proposed Filing is deficient based on the lack of information needed to make an initial assessment under the relevant section of the Act. In order to determine if the fees in question are reasonable and equitably allocated among NASDAQ market issuers, NASDAQ must make those fees apparent. In its Amended Proposed Filing, NASDAQ avoids providing such information leaving issuers to guess at the actual impact of the fees in light of the services being provided. We ask that NASDAQ provide the relevant, *and necessary*, information regarding the allocation of fees among the bundled services in order that interested parties may review the Amended Proposed Rule in a transparent context.

III. Conclusion

As noted above, PR Newswire continues to object to the Amended Proposed Rule in its current form. While PR Newswire anticipates providing an additional comment letter on a number of issues, some of which are set out above, our current and most urgent concern focuses on the lack of necessary information provided with respect to the fees being charged in the Amended Proposed Rule. In our view, the Amended Filing fails to provide adequate, basic information, regarding the fees to be allocated among the bundled services, leaving issuers to speculate at the overall impact of the Amended Proposed Rule on their operations. It should be returned to NASDAQ as inconsistent with applicable requirements of the Exchange Act.¹⁰

environment. Significantly, in today's openly competitive marketplace, PrimeZone enjoys a less than 5% share of NASDAQ listed companies, which provides a compelling indication of why it must rely on NASDAQ's anticompetitive and compulsory suite of services to increase its market share.

¹⁰ Exchange Act Section 19(b)(2)(b).

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If you have comments or if you would like to discuss our concerns, please contact the undersigned at 212/282-1930.

Sincerely,

A handwritten signature in black ink that reads "David B. Armon".

David B. Armon

Cc: Katherine England
Assistant Director
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Division of Market Regulation
US Securities and Exchange Commission
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