NYGG
New York Global Group
紐約國際集團

October 17, 2011

VIA E-MAIL: rule-comments@sec.gov

Ms. Elizabeth M. Murphy
Secretary, U.S. Securities and Exchange Commission
100 F Street NE
Washington, DC 20549-1090

Re: File Number SR-NASDAQ-2011-073
Release No. 34-65319
Proceedings to determine whether to disapprove of the proposed rule change of the NASDAQ Stock Market LLC ("Nasdaq") to adopt additional listing requirements for a company which has become public through a Reverse Merger.

Dear Ms. Murphy:

We respectfully submit our comments to the Securities and Exchange Commission ("Commission")'s proceedings under Section 19(b)(2)(B) of the Act to determine whether to disapprove the rule change proposed by Nasdaq to adopt additional listing requirements for companies that have become public through a reverse merger process (the "Proposal"). The NYSE and NYSE Amex also proposed similar rule changes.

No Research Data Supports the Basis for the Proposed Rule Changes

We strongly believe the stock exchanges had good intentions in proposing these significant listing rule changes. However, these good intentions have unintended consequences which would harm capital formation and hinder small companies' access to the capital markets. Surprisingly, as of today, neither the stock exchanges nor anyone else has published any objective research or hard data that supports the notion that reverse merger companies bear additional scrutiny.

For the reasons stated below, the Commission must consider denying the Proposal until an independent and comprehensive study is completed by the Commission which concludes that 1) Exchange listed reverse merger companies tend to fail more often than IPO companies (*evidence to the contrary is shown in our research, see Exhibit A*) therefore additional scrutiny of reverse merger companies for listing is warranted, 2) the proposed six to twelve month "seasoning" for reverse merger companies will indeed deter corporate frauds, 3) the Exchanges do not already have sufficient rules in place, including their broad discretionary authorities to discourage corporate frauds in both reverse merger and IPO companies.

New York Global Group, Inc. | www.nyggroup.com
The Trump Building, 40 Wall Street, 38th Floor, New York, NY 10005 USA | 212-566-0499

The Vast Majority of Reverse Mergers in America are U.S. based Companies

U.S. based companies, not those from China or other emerging markets are the primary users and beneficiaries of a reverse merger process to list their shares on U.S. stock exchanges. According to the broadly cited PCAOB release "Activity Summary and Audit Implications for Reverse Mergers Involving Companies from the China Region: January 1, 2007 through March 31, 2010" (PCAOB file #2011-P1, the "PCAOB Report"), U.S. based companies constitute the vast majority (74%) of all reverse mergers in the United States. As the Commission, the Administration and members of Congress have recognized, small businesses generate 80% of employment in America and they are the foundation and perhaps the only hope for job growth in our country. In many circumstances, reverse merger is the only available process through which a small U.S. company can raise growth capital through obtaining a listing on a stock exchange. The Proposal, if adopted, would place severe burdens on smaller U.S. companies that are already struggling to gain access to any form of capital in a challenging economic environment.

U.S. Small Businesses Depend On Reverse Merger to Access the Capital Markets

It is currently extremely difficult for small growth companies to access the public markets in the United States. Typically, companies go public through a reverse merger simply because there are no better alternatives available for the following reasons: (1) an underwritten IPO is generally not available to small cap companies due to market uncertainty, lack of interest and economic incentives from established investment banks and institutional investors, (2) the large upfront expense of an IPO creates an unacceptable risk to a small cap issuer - even a small raise in an IPO can easily accrue over $1 million of expenses for legal, accounting, advisory and other upfront expenses, (3) there are far fewer investment banking firms now that are interested in raising capital for a small company and the minimum efficient size issue is often more than $40 million, an impossible valuation for the vast majority of small companies in America; and (4) a reverse merger provides a small company the opportunity to access the public markets with lesser concerns for market conditions - a reverse merger allows an issuer to list with high probability while an IPO subjects an issuer to high market risks with no certainty for a successful listing.

The reverse merger technique is simply an economical and rational method for small cap companies to efficiently access the capital market. When market conditions are not ideal, an IPO is often cancelled or delayed. In a failed IPO, the significant upfront costs are losses that could put the survival of a small company in jeopardy. A Wall Street Journal article dated September 1, 2011 titled *More IPOs Pulled In August Than Any Month In 10 Years*, accurately describes how market conditions could adversely affect a company's plan for an IPO. The article link is here: http://blogs.wsj.com/venturecapital/2011/09/01/more-ipos-pulled-in-august-than-any-month-in-10-years/. In short, a reverse merger requires half as much expense as an IPO and is more reliable and more realistic as to both timing and the ability to actually raise the needed capital for a small company.

My Background as a Securities Attorney and Investment Banker

I have worked on Wall Street for over 30 years. I practiced securities law at Sullivan & Cromwell for almost a decade and worked on many underwritten IPOs representing a broad range of Wall Street investment banks. For the next decade as an investment banker, I headed Merrill Lynch's Far East Investment Banking Office. I am very familiar with the cultural dynamics of Asia based companies. In recent years as a securities attorney, I have worked with small cap growth companies based in the U.S. and China, including some which have become public through the reverse merger process. I am currently the Chairman and General Counsel of New York Global Group ("NYGG"), a U.S. company with extensive Asia related experience. NYGG's multilingual staff has worked on more than 200 Asia related transactions in the last decade, including many that are currently listed with good standing on global stock exchanges. Due to NYGG's extensive due diligence requirements and stringent client acceptance criteria, historically only 2% of China based companies that we have reviewed are accepted as our clients. In our experience, only less than 10% of Asia based clients are even interested in considering listings on U.S. stock exchanges because many of them do not regard U.S. listings as a viable option due to significant regulatory burdens placed on companies - U.S. stock exchanges have some of the highest listing standards in the world.

As a FINRA arbitrator since 1996, I share the Nasdaq and the Commission's concerns about corporate fraud and improper disclosure by public companies. As a specialist in Asia related transactions, we especially disapprove of China-based companies whose actions have violated U.S. securities laws. A few "bad apples" give all China-based companies as a group, a bad name. However, we should not overlook the fact that more than two hundred China-based companies, including reverse merger companies are currently listed in good standing on U.S. stock exchanges. As confirmed by the PCAOB Report, 100% of the auditors of Chinese reverse merger companies are already registered and inspected by PCAOB.

Summary of Our Opposition to the Proposed Changes to the Current Listing Rules

1. The Proposal should be disapproved because it fails to meet the standards of Section 6(b)(5) of the Act. It also fails to address the stated concerns of Nasdaq which forms Nasdaq's basis for the rule proposal. Our research through compiling Bloomberg and SEC data indicates that there is no correlation between the reverse merger technique and regulatory violations. (See Exhibit A)

2. Contrary to popular belief, research data shows that in 2011, a higher percentage of China based IPO companies have been delisted by U.S. stock exchanges than those that have become public via reverse merger (See Exhibit A). As a result, research data simply does not support the perception that small cap reverse merger companies are more likely than IPO companies to violate securities laws.

3. Data also shows that of those delisted China based companies, approximately 52% became public via IPO, 42% via reverse merger, and the remaining via SPAC transactions. All of those reverse merger companies except three have completed follow-on underwritten public offerings ("Re-IPO") which involved underwriter due diligence

and full SEC reviews - the same as required in an IPO. Those delisted IPO/reverse merger companies all have had their public filings reviewed by the SEC staff in their S-1, SB-2, S-3 registration statements or periodic reviews.

4. Further, data shows that of those delisted companies, whether IPOs or reverse mergers, all were delisted more than 3 years after they became public (See Exhibit A). Therefore the 6 month or 12 month "seasoning" requirement as proposed by the Exchanges would not bring additional benefits in enhancing corporate governance nor would it prevent corporate fraud.

In addition to the lack of evidence from research data to support the proposed listing rule changes, the Proposal fails to meet the standards of Section 6(b)(5) of the Act because it is not designed to prevent fraudulent and manipulative acts. There has been no factual demonstration and statistics that suggest any causal relationship exists between going public via reverse merger and corporate fraud and there are no logical reasons to assume its existence. Casting reverse merger companies into a sort of purgatory for six or 12 months' seasoning will have no effect on the character of the company management, nor is there any evidence that time will improve corporate governance. The Proposal does not resolve Nasdaq's concerns regarding known cases where companies manipulate stock prices or promoters of reverse mergers gift stock to satisfy public holder status. The current Exchange listing rules, including the broad discretionary authority, give Exchanges substantial power to discharge their regulatory responsibilities in these cases.

Rule Changes Should Be Made Based on Careful Study of Facts

Short seller and media allegations demonizing the reverse merger technique should never be a sufficient basis to justify adopting new listing standards. As part of the widespread campaign to assert guilt by association, certain reporters friendly with the short selling hedge funds have coined a phrase with negative connotations to stigmatize the reverse merger technique. A favored formulation is *"a backdoor maneuver called a reverse takeover... avoiding the regulatory scrutiny of an IPO."* This loaded denigrating description of the reverse merger process, suggesting a secretive illicit scheme, has been cited in over 20 articles. The suggestions that the reverse merger technique per se is an illegitimate subterfuge and that a company can avoid disclosure requirements by using a reverse merger to go public is inaccurate. The SEC already has in place a strict set of disclosure requirements for reverse merger companies. Exchanges do not give reverse merger companies a free pass. One of the objective voices in the wilderness on this subject is CEO Bob Greifeld of the NASDAQ Stock Market, who refused MSNBC's efforts to pressure him into criticizing reverse merger disclosure, saying "...when you do a reverse merger you are in no way, shape, or form bypassing any listing standards. You're trying to just save some time getting the shelf registration approved. But you still have to have your books and records approved. So that's not a shortcut or backdoor as you call it." (February 8, 2011, CNBC interview) http://blog.redchip.com/index.php/china/nasdaq-omx-ceo-on-chinese-reverse-merger-listing-standards#.TpikqLK6VBm

From a Disclosure Perspective, Reverse Merger + PIPE Financing = IPO

The main purposes for companies to go public are to raise capital and to create a liquid market for a company's shares. For this reason, a reverse merger is almost always immediately followed by a PIPE (private investment in public equity) financing. Upon raising capital in a private placement PIPE, the investors invariably insist that their shares be promptly registered under the Securities Act of 1933 usually via Form S-1, the very form filed in an underwritten IPO. The SEC freely avails itself of its power to review, comment and criticize such filings. If a reverse merger company conducts a follow-on underwritten offering, underwriters are always involved performing the same process, including extensive due diligence, as in an IPO. Over time, there is no distinction between a reverse merger company and an IPO company, both subject to the same quarterly/annual and other SEC filing requirements.

In 2011, More Chinese IPO Companies Were Delisted than Reverse Merger Companies

According to our research, as of October 2011, a total of 29 China based companies have either been required or voluntarily delisted from U.S. stock exchanges in 2011. Our findings, based on data gathered through Bloomberg research and SEC filings, are contrary to the popular belief that reverse merger companies tend to fail more often than companies that have gone public through the traditional underwritten IPO process. The summary of our findings is as follows:

Delisted Companies:	IPO	RM	SPAC
29	15	12	2
% of Total:	52%	41%	7%
Full SEC Reviews:	100%	100%	100%
Underwritten Offerings	100%	75%	100%
Voluntary Delisting - Going Private	4	1	0
Delisting - Regulatory Issues (Total)	11	11	2
Delisting - Regulatory Issues (%)	46%	46%	8%
Delisting - Disclosure Issues:	67%	33%	0
Delisting - Late Filings:	39%	50%	11%

*Source: Bloomberg and SEC filings

An Analysis of the Research Data

1. More China based, U.S. listed IPO companies were delisted from the U.S. stock exchanges than reverse merger companies.

2. All IPO and China reverse merger companies have gone through the same level of full SEC reviews relating to either financing activities or periodic SEC reviews of their filings.

3. Almost all of these delisted China based companies have completed underwritten public offerings through the same level of underwriter due diligence process required in an IPO.

4. All of the reverse merger companies have been public for more than three years prior to delisting - a six or 12 months seasoning period would not have any impact.

Excluding the seven companies which were voluntarily delisted in order to go private and SPACs, 11 IPO companies and 11 reverse merger companies were delisted due to disclosure issues or untimely filing of periodic reports. These basic facts should not warrant Exchanges to subject additional stricter listing standards for one method over the other. The perceived hostile attitude toward China-based companies is causing a growing number of Asia-based companies to avoid listing in the U.S., to voluntarily delist from American exchanges, or to privatize with plans to list in Hong Kong or in other countries, a loss of competitive advantage for the U.S. stock exchanges.

Conclusion

We believe that whether a company complies with disclosure and accounting regulations depends upon the honesty of its management. Over the long term, management integrity matters the most. It is in no way related to the method by which it went public, via IPO or reverse merger. There is nothing wrong with either approach in accessing the capital markets. The Commission and stock exchange officials already have robust listing rules in place to protect the general public. The additional rules as outlined in the Proposal were very well intended, but in our view, not necessary. Additional research is critically needed on the topic of reverse merger/IPO prior to any rule change approvals. The Proposal, if adopted, is likely to cause more unnecessary harm to small businesses in America.

Sincerely,

James N. Baxter, Esq.
Chairman and General Counsel
New York Global Group

New York Global Group, Inc. | www.nyggroup.com
The Trump Building, 40 Wall Street, 38th Floor, New York, NY 10005 USA | 212-566-0499

NYGG
New York Global Group
紐約國際集團

EXHIBIT A:

Analysis of China Based Companies Delisted From U.S. Stock Exchanges as of October 2011

Name	Ticker	Exchange	Listing	SEC Reviewed Filings*	Underwriters** in Registered Public Offerings	Underwritten Date	Auditor	Reason for Delisting	Date of RM	RM Delisting Date
NEW DRAGON ASIA CORP	NWD	NYSE	IPO	Yes	Redstone Securities	3/1/2000	Parker Randall	Late Filing	---	---
XINHUA SPORTS & ENTERTAINMENT	XSEL	Nasdaq	IPO	Yes	JP Morgan, UBS	3/1/2007	Deloitte Touche	Disclosure	---	---
DUOYUAN PRINTING INC	DYNP	NYSE	IPO	Yes	Piper Jaffray, Roth Capital	11/1/2009	Deloitte Touche	Late Filing	---	---
CHINA ELECTRIC MOTOR INC	CELM	Nasdaq	IPO	Yes	Roth Capital	1/1/2010	Kempisty & Co.	Late Filing	---	---
CHINA MEDIA EXPRESS HOLDINGS	CCME	Nasdaq	SPAC	Yes	Pali Capital	10/1/2007	Deloitte Touche	Late Filing	---	---
CHINA CENTURY DRAGON MEDIA	CDM	AMEX	IPO	Yes	West Park Capital, I-Bank	2/1/2011	MaloneBailey	Late Filing	---	---
NIVS INTELLIMEDIA TECHNOLOGY	NIV	AMEX	IPO	Yes	Rodman & Renshaw, Westpark Capital	03/09, 04/10	MaloneBailey	Late Filing	---	---
CHINA INTELLIGENT LIGHTING	CIL	AMEX	IPO	Yes	Rodman & Renshaw, Westpark Capital	6/1/2010	MaloneBailey	Late Filing	---	---
FUQI INTERNATIONAL INC	FUQI	Nasdaq	RM	Yes	William Blair & Merriman Curhan Ford	10/07, 07/09	Stonefield	Late Filing	11/1/2006	10/1/2011
CHINA-BIOTICS INC	CHBT	Nasdaq	RM	Yes	Roth Capital	9/1/2009	BDO Limited	Late Filing	3/31/2006	10/6/2011
CHINA RITAR POWER CORP	CRTP	Nasdaq	RM	Yes	Rodman & Renshaw	2/1/2007	AGCA, Inc.	Late Filing	2/1/2007	10/13/2011
PUDA COAL INC	PUDA	AMEX	RM	Yes	Brean Murray Carret, Macquarie	02/10, 12/10	Moore Stephens	Disclosure	7/1/2005	9/22/2011
SUBAYE INC	SBAY	Nasdaq	RM	Yes	---	---	DNTW	Late Filing	2/1/2005	5/31/2011
SHENGDATECH INC	SDTH	Nasdaq	RM	Yes	Morgan, Oppenheimer, William Blair	11/1/2010	KPMG	Late Filing	3/1/2006	6/9/2011
YUHE INTERNATIONAL INC	YUII	Nasdaq	RM	Yes	Roth Capital	10/1/2010	Child, Van Wagoner	Disclosure	3/1/2008	7/21/2011
WONDER AUTO TECHNOLOGY INC	WATG	Nasdaq	RM	Yes	Jefferies, Oppenheimer, Piper Jaffray	11/1/2009	PKF CPAs	Late Filing	6/1/2006	8/29/2011
CHINA INTEGRATED ENERGY INC	CBEH	Nasdaq	IPO	Yes	Oppenheimer	10/1/2009	KPMG	Late Filing	---	---
CHINA AGRITECH INC	CAGC	Nasdaq	RM	Yes	Rodman & Renshaw	4/1/2010	Crowe Horwath	Late Filing	2/1/2005	5/19/2011
JIANGBO PHARMACEUTICALS INC	JGBO	Nasdaq	RM	Yes	---	---	Frazer Frost	Late Filing	10/1/2007	8/4/2011
LONGTOP FINANCIAL	LFT	NYSE	IPO	Yes	DB, Morgan Stanley, Goldman Sachs	10/07, 11/09	Deloitte Touche	Disclosure	---	---
CHINA CABLECOM HOLDINGS LTD	CABL	Nasdaq	RM	Yes	EarlyBirdCapital	4/1/2006	UHY Vocation HK	Late Filing	4/1/2008	7/18/2011
TONGJITANG CHINESE MEDIC	TCM	NYSE	IPO	Yes	Merrill Lynch, UBS	3/1/2007	Deloitte Touche	Going Private	---	---
CHEMSPEC INTL LTD	CPC	NYSE	IPO	Yes	Citi, Credit Suisse	6/1/2009	KPMG	Going Private	---	---
FUNTALK CHINA HOLDINGS LTD	FTLK	Nasdaq	IPO	Yes	Merrill Lynch, Rodman, Jefferies	12/06, 12/09, 10/10	Deloitte Touche	Going Private	---	---
TIENS BIOTECH GROUP USA INC	TBV	AMEX	RM	Yes	---	---	Crowe Horwath	Going Private	9/1/2003	8/16/2011
CHINA SECURITY & SURVEILLANCE	CSR	NYSE	IPO	Yes	Oppenheimer	5/1/2010	GHP Horwath	Going Private	---	---
A-POWER ENERGY	APWR	Nasdaq	SPAC	Yes	EarlyBird Capital, Chardan Capital	8/1/2005	MSCM LLP	Late Filing	---	---
DUOYUAN GLOBAL WATER	DGW	NYSE	IPO	Yes	Piper Jaffray, Credit Suisse	06/09, 01/10	Grant Thorton	Disclosure	---	---
RINO INTERNATIONAL CORP	RINO	Nasdaq	IPO	Yes	Rodman & Renshaw	12/1/2010	Moore Stephens	Disclosure	---	---

Source: Bloomberg financial, SEC filings

IPO - Initial Public Offering; RM -Reverse Merger; SPAC - Special Purpose Acquisition Company (underwritten public offerings)

****SEC review of S-1, S-3, SB-2, or company public filings through staff comment letters***

***** Completed IPO or Follow- On Underwritten Public Offerings/Secondary Offerings***

SUMMARY: (As of October 2011)			
Delisted Companies: **29**			
Listing	**IPO**	**RM**	**SPAC**
	15	12	2
% of Total:	52%	41%	7%
Full SEC Reviews:	100%	100%	100%
Underwritten Offerings	100%	75%	100%
Voluntary Delisting - Going Private	4	1	0
Delisting - Regulatory Issues (Total)	11	11	2
Delisting - Regulatory Issues (%)	46%	46%	8%
Delisting - Disclosure Issues:	67%	33%	0
Delisting - Late Filings:	39%	50%	11%

CONCLUSION:

1) More IPO companies are delisted from U.S. stock exchanges than reverse merger companies
2) All IPO and reverse merger companies have gone through the same level of full SEC review relating to either follow-on offerings or periodic SEC reviews of their public filings
3) Almost all delisted companies have had underwriter due diligence completed in follow-on offerings, the same exact process used in IPO offerings
4) All of the reverse merger companies had become public for more than 3 years before delisting