Locke Lord LLP
Attorneys & Counselors

500 Capitol Mall, Suite 1800
Sacramento, CA 95814
Telephone: 916-930-2500
Fax: 916-930-2501
www.lockelord.com

October 17, 2011

Via email

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

Re: Release No. 34-65319; File No. SR-NASDAQ-2011-073

Dear Ms. Murphy:

We respectfully submit this comment letter in response to Release No. 34-65319, dated September 12, 2011 (the "Release"), in which the Securities and Exchange Commission (the "Commission") requested comments on whether the Commission should disapprove of proposals by the NASDAQ Stock Market, LLC ("Nasdaq"), the New York Stock Exchange, LLC ("NYSE"), and the NYSE Amex, LLC ("Amex") (collectively, the "Exchanges") relating to additional listing requirements for companies that have become public through a combination with a public shell.

In the following discussion, we suggest both an exception and an addition to these proposed listing requirements. The comments set forth in this letter reflect our views and not necessarily those of any of our clients.

1. Exception to the definition of a "Reverse Merger" where the securities issued in the reverse merger are registered with the Commission.

On May 26, 2011, Nasdaq proposed certain "seasoning" requirements in connection with the listing of "Reverse Merger" companies.[1] For the purpose of its proposal, Nasdaq defined a "Reverse Merger" as any transaction whereby an operating company becomes public by combining with a public shell, whether through a reverse merger, exchange offer, or otherwise.

[1] As described in the Release and Release No. 34-64633, these "seasoning" requirements include trading on another exchange for at least six months, maintaining an average stock price, and timely filing financial reports. The NYSE and Amex have proposed similar, though more stringent, requirements as described in Release No. 34-65033 and our comments in this letter are equally applicable to those proposals.

Nasdaq's proposal excludes three types of transactions from its definition of a Reverse Merger.[2] We propose that a fourth exception be added to this list. Specifically, we propose that for the purpose of the proposed "seasoning" requirements the definition of a "Reverse Merger" also exclude a reverse merger when the securities issued in that merger have been registered with the Commission. We believe this exception would harmonize the proposed "seasoning" requirements with the Commission's general regulatory framework while still addressing the criticisms of reverse mergers that the Nasdaq proposal seeks to address.

Criticisms of the reverse merger process often note that reverse mergers are not subject to a full review by the Commission prior to the consummation of the transaction. Critics thus argue that the securities of the combined entity trade in the public market without having been reviewed by the Commission. However, were the securities to be issued in a reverse merger registered on Form S-4 or S-1, that criticism would be moot. Completing a Securities Act of 1933 (the "Securities Act") registration statement in connection with a reverse merger would cause the transaction to be subject to the same level of Commission scrutiny as a traditional initial public offering.

Accordingly, we do not believe that a company which chooses to go public by way of a Securities Act registration statement and a merger with a shell company should bear any burdens not borne by companies that go public by way of a Securities Act registration statement and an initial public offering. Adding our suggested fourth exception to the definition of a "Reverse Merger" would direct Nasdaq's proposed "seasoning" requirements towards those transactions which have not been subjected to a full Commission review without further encumbering those transactions which have. The Commission's pre-issuance review of a Securities Act registration statement has always been seen as offering sufficient protection for the investing public and we do not believe that this long standing tenet of securities regulation should be done away with by operation of an Exchange listing requirement.

2. Additional listing requirement for companies controlled by non-U.S. residents – consent to service of process.

Though not directly addressed in the Exchanges' proposals, we submit the following suggestion for the Commission's consideration. We suggest that, as a condition of listing, if a reverse merger company[3] is controlled by a person who is not a U.S. resident (a "Control Person"), that Control Person (or Persons) be required to execute a consent to service of process in the U.S. In determining whether a non-U.S. resident controls such a reverse merger company, we propose that the Exchanges rely on the definition of "beneficial ownership" set

[2]The Nasdaq proposal excludes the following transactions from its definition of a "Reverse Merger" (i) acquisitions of an operating company by a listed company satisfying the requirements of IM-5101-2 whose business plan is to complete one or more acquisitions, (ii) business combinations, as described in Rule 5110(a), relating to a listed company that combines with a non-Nasdaq entity resulting in a change of control of the Nasdaq entity, and (iii) a substitution listing event, as defined in Rule 5005(a)(39), such as the formation of a holding company or a merger to facilitate a re-incorporation.

[3] For the purpose of our suggestion, we would include in our definition of a reverse merger company all companies which go public by combining with a public shell whether through a reverse merger, exchange offer, or otherwise.

forth in Rule 13d-3 of the Securities Exchange Act of 1934 (the "Exchange Act") and the definition of "control" set forth in Rule 405 of the Securities Act.

We believe that this consent to service requirement would help to address concerns relating to the reliability of disclosures from foreign controlled reverse merger companies. By requiring a Control Person of a reverse merger company to submit to service of process in the U.S., a Control Person would likely be further incentivized to invest in the accounting, auditing, and legal services required to provide full and accurate disclosure to the market. This requirement may also provide some comfort to investors who would have a greater opportunity to bring an action against a Control Person in the event of wrongdoing. We believe that requiring a non-U.S. resident, who controls a reverse merger company, to consent to service of process in the U.S. will send a strong message of accountability and personal responsibility to those non-U.S. residents who might not otherwise pay due respect to the U.S. securities laws.

We appreciate the opportunity to comment on the Release and please feel free to contact Scott E. Bartel at (916) 930-2513 or Roel Campos at (202) 220-6931 if you would like to discuss any topic in this letter at greater length.

Very truly yours,

/s/ Locke Lord LLP

Locke Lord LLP