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

Re: SEC File Number SR-NASDAQ-2011-122

Dear Ms. Murphy:

This letter is in response to the request for comments on the NASDAQ Stock Market's proposed rule change to offer complimentary services to select issuers. PR Newswire Association LLC ("PR Newswire") is a provider of news and content distribution, data, web hosting and compliance services that, among other things, assists public companies with the mass dissemination of material company information. PR Newswire has been in the news dissemination business for close to 60 years and is committed to helping public companies meet their information disclosure obligations to the investing public and better engage with investors, analysts, portfolio managers, journalists and other constituents.

PR Newswire appreciates this opportunity to register its strong opposition to NASDAQ's proposed rule change. The SEC has in the past refused to approve similar NASDAQ proposed rules. NASDAQ's proposal, if approved, would create an inequitable allocation of listing fees to the divisions of NASDAQ that provide the relevant services, along with a negative impact on competition in the markets associated with the relevant services. It would also result in many instances of an issuer using a service for disclosure because they have already effectively paid for this service in their listing fee rather than basing their decision on the quality of the services or whether the service will enable it to broadly and simultaneously distribute information to all investors in accordance with the foundation of Regulation FD. NASDAQ indicates that its services are designed to enhance transparency, mitigate risk, maximize efficiency and facilitate better corporate governance, but by effectively coercing issuers into using NASDAQ services, NASDAQ would be making it economically difficult for such issuers to work with higher quality services that are more likely to maximize transparency, disclosure and engagement.

NASDAQ's proposal to bundle "free" IR services with listings is clearly a form of tying. By burying service fees of the various divisions of NASDAQ into an issuer's listing price, NASDAQ is effectively forcing the relevant issuers to pay for these services – even if the issuer does not want the service. While these services are positioned as "free," NASDAQ is clearly compensated for these services through the payment of listing fees to divisions of NASDAQ that NASDAQ ultimately consolidates into its financial results. This puts issuers in a difficult position. Having already effectively paid for these services, an issuer comes under financial pressure to accept NASDAQ's services rather than pay for them again with another provider. This creates an uneven playing field in the market, distorts competition, and results in NASDAQ coercing issuers to buy services that may not be their first choice or meet their corporation's strict buying criteria.

NASDAQ indicates that its proposal has merit based on the recent approval of NYSE's rule change regarding complimentary services provided to issuers. NASDAQ indicates that "NASDAQ believes that these companies receive comparable services from the NYSE." However, NYSE's rule change and the NASDAQ proposal are very different. NYSE offers IR services through a variety of service providers, all of whom are independent of NYSE. NYSE is also offering issuers a choice regarding which provider it wishes to use for these services. This enables the relevant providers to compete on a level playing field and gives the issuers choices. The NASDAQ proposal only funds the relevant services if such services are provided by divisions of NASDAQ, which effectively discriminates against any company that chooses to work with a NASDAQ competitor.

NASDAQ's proposal is consistent with NASDAQ's previous attempts to gain regulatory clearance to engage in anticompetitive and otherwise unlawful tying. Despite the SEC's prior refusal to approve NASDAQ's practice of tying "free" IR services to issuer fees, NASDAQ continues to effectively tie its services to listings in practice in the market. NASDAQ is clearly trying to use the recent NYSE approval as a smokescreen to gain regulatory approval for this practice. However, as indicated above, NASDAQ's proposal is materially different than the recently approved NYSE rule.

The SEC has previously indicated that one of its main concerns is the equitable allocation of listing fees. An issuer that lists with NASDAQ and uses the services of NASDAQ's divisions effectively pays a lower listing fee than a similarly situated company that opts instead for IR services from PR Newswire or any other NASDAQ competitor. In light of the fact that the NASDAQ listing fee would be bundled with the IR services cost, an inequitable result would necessarily follow, distorting the net listing fees paid by other issuers. NASDAQ's proposal would create a significant disparity between what companies pay and receive for their listing fees with the fees for new listing allegedly providing up to $169,000 more in services than the same fees paid by existing listings and by newly listed companies that either moved to NASDAQ from an Exchange other than NYSE or that opted to work with a NASDAQ competitor.

NASDAQ indicates that issuers are not required to take advantage of its "free" services. However, there is no doubt that the proposed tying practices adversely affect competition. In today's economic environment, issuers are less likely to choose to pay for services when they can get some for "free" regardless of whether the "free" services actually meet their exact needs.

We support and understand that the stock exchanges should have the competitive business freedom to offer an issuer greater value by subsidizing compliance and visibility tools as long as the issuers have the same freedom to avail themselves of the subsidies on the basis of their independent selection of providers based on their own analysis of different solutions available in the marketplace.

PR Newswire’s concern here goes well beyond the impact of NASDAQ’s proposed rule change on competition. NASDAQ’s current practice of offering “free” or significantly discounted services for its issuers clearly has impacted a number of competitors in the market. Although our business continues to grow and to compete for business from NASDAQ issuers based on the quality of our services, it is never easy for any company to compete with something that is positioned as “free”. The bigger issue from our perspective is that it is not appropriate for a Self Regulated Organization such as a stock exchange to have regulatory support for a tactic that involves effectively coercing an issuer to use the SRO’s self-owned products and services. Also, we fear that an approval of NASDAQ’s proposal will open the door for NASDAQ to submit a subsequent proposal that will permit it to tie its services into listing fees for all issuers.

PR Newswire appreciates the opportunity to provide comments on NASDAQ’s Proposal. We would be happy to discuss these views further at your request.

Sincerely,

John Viglotti
Vice President, IR Services, PR Newswire Association LLC