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VIA EMAIL October 22, 2011

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

RE: *Release No. 34-65324; File No. SR-NASDAQ-2011-122*

Dear Ms. Murphy:

The purpose of this correspondence is to respond to your request for comment regarding Nasdaq's Proposed Rule Change to Describe Complimentary Services that are Offered to Certain New Listings on NASDAQ's Global and Global Select Markets.

We reviewed Nasdaq's filing through the same lens that we utilized in our review of the NYSE's recent service filing. It should, therefore, come as no surprise to anyone that we have arrived at precisely the same conclusions. Rather than approve Nasdaq's proposed service matrix, we strongly recommend to the Commission that you order both exchanges to commence a comprehensive review of listing fees in light of monumental shifts in the structure and operations of the US equities markets.

There was not a single comment letter from an issuer (the community most affected by the proposed rule) in response to either the NYSE or the Nasdaq filings. Rather, all three responses to the Nasdaq proposal were from newswire service peers who appear to feel threatened by competition from Nasdaq. We found it very interesting that their responses neglected to reference that Nasdaq acquired one their chief competitors as a key component of its core issuer services platform – and that the transaction was approved by the Commission. It is logical, then, to expect that Nasdaq would compete in the investor relations service sector. The self-serving arguments put forth by the newswire service providers fail to see the bigger picture – issuers want more bang for their listing buck through competition. This antiquated notion of service platform isolation in a highly competitive market listing environment does not reflect current business realities. Their position has nothing to do with fairness in the securities markets. It is little more than a self serving attempt to curb competition in the service sector.

To be fair and consistent with the approach that we utilized in response to the NYSE filing, we have once again discussed the proposed service matrix with numerous issuers and have presented, herein, a collective issuer perspective on the proposal. Below you will find an Executive Summary representing a consensus issuer viewpoint. More detailed observations follow this summary and support the basis for this consensus position.

Executive Summary

While well intended, the proposal grossly exceeds its core objective of providing transparency with respect to "complementary services" to issuers. Rather it inhibits competition for listings. There are numerous arguments in support of this position to include:

- While attempting to create transparency, the program limits service offerings via a service cap
- The proposal makes it increasingly difficult for issuers to unlock the real value of their market listing – the hundreds of millions of dollars in trading fees collected by the exchanges every year for the trading of the issuers' shares
- The transformation of the exchanges to publicly traded entities requires that a pure competitive service model take precedence over a service cap methodology which has its roots in a not-for-profit model
- True competition will always produce a superior solution to any formula based service allocation mechanism imposed by regulatory fiat
- The historical basis upon which the fee schedule was determined is no longer valid as a result of Reg NMS and the resulting seismic shift in market share for all markets

- The time has come to raise the question: given the substantial sums of money made from listings by the exchanges, why do issuers pay any listing fees at all?

Details in support of each of these comments follow in the section entitled “Detailed Observations”.

Recommendations:

We recommend that the SEC disapprove this filing and request that both listing exchanges fully evaluate the idea of free listings. With this constraint removed, SEC concerns with respect to discounting of listing fees will no longer stand as an impediment to expanding the respective exchanges’ service offerings.

Alternatively, we propose that the SEC commission an independently selected task force comprised of issuers from both markets to recommend a model that will permit the respective exchanges to provide value added services without limitation, thereby ensuring maximum competition between the exchanges.

Detailed Observations

The impact of Reg NMS on the value proposition of exchanges:

In short, Reg NMS mandated faster markets and radically changed the historical price discovery mechanism of the exchanges, especially the NYSE. It also had the unintended consequence of dramatically reducing the NYSE’s market share from roughly 85% to approximately 25% today (excluding Arca, its electronic platform). To be fair, Nasdaq also saw a decline in its market share as electronic markets (to include High Frequency Traders and Dark Pools) garnered more business. As a further byproduct of Reg NMS, issuers lost the highly valued services of the specialist who committed capital and endeavored to add liquidity while reducing volatility in his/her stock. This role also served to provide keen insights into potential buyers and sellers. These important benefits were a vital component of the premium fees charged (via approval by the SEC) to issuers and disappeared in the post-Reg NMS environment. Despite this material change in the respective exchanges’ value proposition, there was no commensurate reduction in listing fees. Why?

While we salute Nasdaq's efforts to provide more value to their listed companies, issuers would much prefer a comprehensive reduction in listing fees. FREE LISTINGS! The exchanges make more than enough money on the trading of the shares.

<u>"Complimentary Products and Services" vs. Service Caps:</u>

Issuers take exception to the term "complementary" in this filing. There is nothing complementary about these services. Make no mistake about it – issuer pay dearly for these premium services.

<u>The Road Ahead</u>:

Compelled by the economics of the modern market place, BATS has already announced its intention to enter the listing business. Obviously, BATS sees the opportunity to garner greater revenues (both listing and trading). Hidden from the open view of issuers, however, is the real economic value of their listing – trading fees. It is inevitable, we believe, that companies will increasingly seek to quantify the hidden value of their listings and will discover that the real value is a multiple of their annual listing fee. They will demand an enhanced value proposition. Unfortunately, the service constraints inherent in proposed service allocation methodology will significantly reduce their ability to unlock the real economic value of their market listing.

<u>The US Exchanges as Publicly Traded Entities</u>:

When the current caps on listing fees were approved by the SEC, all of the US exchanges were member based organizations rather than publicly traded companies. They operated on a cost recovery model rather than a shareholder/profit model. Hence, any excess revenue streams (both listing and trading) will now accrue to the benefit of shareholders rather than being reflected in a lower cost to members and issuers. This is an unintended consequence of the exchanges becoming publicly traded enterprises in a post Reg NMS environment.

Real Competition vs. Regulatory Fiat:

As evidenced by the DOJ's recent rejection of Nasdaq's bid for the NYSE, competition is the cornerstone of American capitalism. We are concerned that this proposal (like that of the NYSE) will result in the equivalent of a maximum service cap and will be used as a justification for limiting service offerings. "We would like to do more to keep your business but are limited as to what we can do by the SEC rules". Indeed, we have just received such a complaint from a NYSE listed company – only days after the NYSE service matrix was approved. Hence, SEC approval of this proposal will have the effect of setting the SEC up as a scapegoat. We strongly believe that services caps via regulatory fiat should be replaced by hard-nosed, head-to-head competition. True competition will always produce a superior solution to any formula based service allocation mechanism.

Transparency vs. Formula Based Service Caps:

The SEC has expressed its desire for transparency and ensuring that there are no "secret deals" that are tantamount to a stealth reduction of listing fees. In attempting to comply with the SEC's request for transparency, the NYSE rationally turned to a formula to avoid such perceptions. Unfortunately, service caps have limitations. We do not believe that this is what the SEC had in mind in terms of transparency. Hence, some form of periodic disclosure by the exchanges to the SEC of issuer service arrangements would provide the requisite transparency without promoting service limitations.

Free Listings:

Based upon the aforementioned issuer feedback, we believe the time has come to raise the obvious question: why are issuers paying any listing fees at all? As the above arguments indicate, the basis for charging listing fees has dissipated. History tells us that rules such as those herein proposed tend to restrict competition. One need look no further than Rule 500 and Rule 106 – both repealed in favor of increased competition. With the exchanges having now transformed their trading platforms into annuity machines and their corporate structures into public profit centers, the true economics of the listing business require commensurate reengineering. Without the benefit of the shares being listed by the issuer community, none of this would be possible. Shouldn't the exchanges be paying the issuers for their listing instead of the other way around?

Conclusion

We give the SEC very high marks for its impressive achievements in reshaping the markets in a post Reg NMS environment. These improvements are many - from Symbol Portability to the recently enacted individual stock circuit breakers in response to the Flash Crash. We are confident that competitive challenges as set forth in our response will give rise to a fair and equitable resolution under your guidance.

We thank you again for the opportunity to comment and stand prepared to be of assistance in any manner you may require.

Kindest regards,

PJH

Patrick Healy is CEO of Issuer Advisory Group, corporate America's leading issuer advocate and market expert. Mr. Healy serves on the Board of Directors of Direct Edge (the country's fourth largest stock exchange, which trades but does not list stocks). He holds a CPA and an M.B.A. and spent eight years on the faculty of the Georgetown University McDonough School of Business.