



Holme Roberts & Owen LLP
Attorneys at Law

SAN FRANCISCO

November 15, 2011

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

BOULDER

Re: SEC File Number SR-NASDAQ-2011-122
Business Wire's New Information on NASDAQ Proposal To Ratify Tying

COLORADO SPRINGS

Dear Ms. Murphy:

We represent Business Wire, Inc., a wholly owned subsidiary of Berkshire Hathaway and a leading transmitter of full-text news releases, regulatory filings and multimedia content to journalists, financial planners, investor services, regulatory authorities and the public ("Information Dissemination Services").

DENVER

On October 7, 2011, we submitted on Business Wire's behalf a comment letter concerning the above-referenced proposed rule change requested by NASDAQ Stock Market LLC ("NASDAQ"). As Business Wire explained in that comment, as well as an earlier comment submitted by the company directly on September 28, NASDAQ's assertion in SR-NASDAQ-2011-122 that it would only "implement the proposed rule" change that it sought "upon approval" by the Commission was inaccurate.

DUBLIN

Rather, SR-NASDAQ-2011-122 neglected to inform the Commission that NASDAQ is seeking approval of its ongoing practice of tying "free" Information Dissemination Services ("IDS") and other Investor Relations services provided by NASDAQ OMX Group Corporate Solutions to a listing on NASDAQ – despite twice assuring the Commission it would not tie offers of free IDS or other IR services to a listing on NASDAQ (and would expressly disclaim any tying of free or discounted IDS with a listing).

LONDON

LOS ANGELES

We write again to update that comment with additional information of such tying that Business Wire learned of just this month, after the Commission on October 28 extended until December 15, 2011 its time either to "approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change." Release No. 34-65653 at 2 (Oct. 28, 2011).

SALT LAKE CITY

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Earlier this month, Business Wire was informed by a long-standing client that, as a direct consequence of its decision to list on NASDAQ, the client was being provided “free” IDS by NASDAQ (which, based on the client’s historical IDS usage, will be worth nearly \$50,000 per year, if not more) as part of the cost of the listing. Although the client said it has been very pleased with Business Wire’s service, and did not want to switch, it felt compelled to do so because “Nasdaq gave us free [IDS] for a year” – actually, a year and a half – and “then super cheap after” that, all as part of its listing on NASDAQ. Consequently, the client terminated its written contract with Business Wire this month and switched its IDS to NASDAQ, which it would not have done had NASDAQ not bundled “free” IDS with the price of the listing.

This new incident corroborates the information provided in our letter of October 7, as well as in Business Wire’s original comment of September 28, demonstrating that NASDAQ has been engaged in the very tying for which it now purports to be seeking Commission approval long before the Commission rules and despite earlier assurances to the Commission to the contrary.

In light of this information, Business Wire respectfully requests that the Commission disapprove, or at least “institute proceedings to determine whether to disapprove,” the proposed rule change sought in SR-NASDAQ-2011-12. As the Commission can appreciate, Business Wire is reluctant to identify the client, or provide more specifics, in a public comment. However, Business Wire would be pleased to meet with the Commission to provide more specifics to assist it in reaching its decision, or in the event proceedings are instituted.

Respectfully Submitted,

Jesse W. Markham, Jr.
Roger Myers
Michael R. MacPhail

By: 

Roger Myers
Co-Chair, IP, Media and Technology Department

cc: David Shillman