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Filed Electronically

Ms. Nancy Morris, Secretary
U.S. Securities and Exchange Commission
100 F. St., N.E.
Washington, D.C. 20549

Re: *Commission File No. SR-NASDAQ-2006-040;*
Listing Fees and Bundled Services

Dear Ms. Morris:

We submit these comments on behalf of Thomson Financial LLC ("Thomson Financial") regarding the above-referenced proposal that The NASDAQ Stock Market LLC ("Nasdaq") recently filed to increase its listing fees and to bundle into those fees the costs of certain commercial corporate communications and investor relations services.[1] For the reasons set forth below, Thomson Financial respectfully submits that this proposal does not provide for the equitable allocation of fees among Nasdaq's listed issuers and that it would impose an unwarranted burden on competition. We therefore request that the Commission decline to approve the proposal as submitted.

Thomson Financial is a $1.9 billion provider of information and technology solutions to the worldwide financial community. Through the widest range of products and services in the industry, Thomson Financial helps clients in more than 70 countries make better decisions, be more productive and achieve superior results. Thomson Financial is a subsidiary of The Thomson Corporation, (NYSE: TOC, TSX: TOC), an $8.4 billion provider of value-added information, software tools and applications to professional and business customers worldwide.

Among Thomson Financial's offerings is a suite of services that deliver and manage online investor relations, capital markets intelligence, public relations and corporate communications for more than 4,500 public companies around the world. For example, Thomson IR Webcast Solutions delivers customized, dynamic presentations over the Internet for events such as

[1] Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto, to Modify Certain Fees for Listing on The Nasdaq Stock Market and to Make Available Products and Services Intended to Assist Companies With Their Disclosure and Regulatory Obligations, Shareholder Communications, and Other Corporate Objectives, SEC Rel. No. 34-54752 (November 14, 2006), 71 Fed. Reg. 67410 (November 21, 2006) ("Proposing Release").

earnings calls, analyst presentations, sales updates, product launches, *etc*. Using audio, video and synchronized slide shows, Thomson IR Webcast Solutions produces over 25,000 webcasts per year. The service also includes the creation of data-tagged, interactive annual reports, advisory press releases issued through PR Newswire or BusinessWire, and webcast distribution through Thomson Financial's StreetEvents℠ institutional event management database. With more than 22,000 analyst and portfolio manager subscribers, StreetEvents is the leading repository of investment-related event information received directly from public companies and investment firms. Webcast distribution is not limited to the institutional market, however; StreetEvents℠ for Individuals allows webcasts to reach retail investors as well, through portals such as America Online, MSN and Yahoo! Finance.

In addition to the foregoing, Thomson Financial Corporate Services provides capital markets information relating to equity ownership and market activity for over 4,500 publicly traded companies and financial professionals worldwide. Among the services offered in this area is Thomson ONE IR, an online platform that provides investor relations professionals with institutional ownership and contact information, as well as real-time market data such as news, quotations, alerts, analytics and financial tools.[2]

Nasdaq's Proposal

Nasdaq is seeking, among other things, to increase its annual listing fees for Nasdaq Global Market and Nasdaq Capital Market issuers. The proposed increase ranges from $500 to $20,000 per year, depending on the issuer's total shares outstanding.

According to the Proposing Release, the requested increase in annual listing fees is designed to offset a number of costs incurred by the exchange. First, it is intended to reflect the "substantial resources [Nasdaq] dedicates to its regulatory programs . . . ."[3] Second, it is intended to cover enhancements Nasdaq has made to its trading systems since it last raised its fees. In this regard, Nasdaq cites the costs of developing and running an "Opening Cross" and a "Closing Cross," and its planned launch of "Intraday Crosses," a "Post-Close Cross" and its "Single Book" platform.

Finally, the proposed fee increase is intended to defray the cost of a host of products and services designed to assist listed issuers with their regulatory and disclosure obligations, shareholder communications and other business needs. In this regard, Nasdaq proposes to enhance its Market Intelligence Desk and its NASDAQ Online services to provide issuers with information and analysis to help them manage their investor relationship programs and understand movements in the market for their securities.

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[2] Information about Thomson Financial's other corporate communications and investor relations services is available at www.thomson.com/financial.

[3] Proposing Release, 71 Fed. Reg. at 67411.

In addition to the foregoing, Nasdaq also proposes to offer issuers a number of new services, including:

- A service that converts annual reports and proxy materials into an online document to be used by current and potential shareholders

- Four press releases of up to 500 words each through PrimeNewswire Inc. (formerly known as "PrimeZone Media Network"), which Nasdaq acquired in the summer of 2006

- Four audio webcasts via Shareholder.com, which Nasdaq acquired in February, 2006

- Four Form 8-K filings

- Customized reports to help analyze exposure to securities litigation

- Peer data on the size, structure and cost of director and officer insurance programs

These proposed ancillary service offerings are for calendar year 2007 only. As for future offerings, the Proposing Release says: "Nasdaq also plans to offer these or similar services on an ongoing basis, but will evaluate companies' usage of the services and explore other opportunities for services for listed companies, and may adjust the mix of products and services accordingly."[4]

Thomson Financial submits that tying the cost of commercial services to regulatory fees in the manner Nasdaq proposes does not satisfy applicable legal standards.

The Proposal Does Not Provide For The Equitable Allocation Of Fees Among Nasdaq's Listed Issuers

Section 6(b)(4) of the Securities Exchange Act of 1934 ("Exchange Act") requires the rules of a national securities exchange to "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities." Unfortunately, Nasdaq has failed to supply meaningful information about the relationship between the fee increase it proposes and how it plans to use those increased fees. We do not know, for example, what portion of the proposed annual fee increase would be used to defray the costs of Nasdaq's regulatory activities, what portion would be attributable to enhancements in its trading systems and what portion would be used to cover the costs of the investor relations and corporate communications services it proposes to offer.

Furthermore, while Nasdaq acknowledges that "not every company will use every service,"[5] it does not estimate how many issuers can be expected to use each service, or whether an issuer's expected use will be proportionate to the amount of its fee increase. Nor does

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[4] *Id.* at note 8.

[5] *Id.* at 67412.

Nasdaq make any representations about whether it even has the capacity to deliver each service to every issuer who might elect to use it.

Despite this remarkable dearth of information, what Nasdaq has said about its proposal is sufficient to establish that the fees it seeks to charge would not be equitably allocated. By bundling the cost of ancillary services in with regulatory listing fees, Nasdaq would require issuers to pay for services they may neither need nor want. Moreover, because the cost of the ancillary services, if priced separately, would far exceed the $5,000 fee increase that 91% of the listed issuers are expected to pay,[6] Nasdaq's proposed fee structure would cause issuers who do not use the services to subsidize those who do.

Forcing one party to defray the cost of a benefit directed to another party is the antithesis of equitable allocation. This proposal should not be approved.

The Proposal Would Impose An Unwarranted Burden On Competition

Nasdaq's proposal also fails to comply with Section 6(b)(8) of the Exchange Act, which prohibits the rules of a national securities exchange from imposing any burden on competition that is not necessary or appropriate in furtherance of the purposes of the statute. Fair competition is vital to the safety and soundness of the capital markets. This is true with regard to both the issuers of securities and those who provide services to them. Fair competition spurs innovation, fosters quality and keeps prices at a reasonable level. Where corporate communication and investor relations services are involved, competition enhances issuers' ability to comply with their regulatory obligations and leads to better-informed investors.

Unfortunately, Nasdaq's proposal serves none of these laudable goals. Stripped to its essence, this proposal is an attempt by a national securities exchange to increase the market share of commercial service providers it has acquired by forcing issuers to pay for those services as a condition to listing on the exchange. Nasdaq's discussion of the effect of its proposal on the press-release distribution market illustrates this point. According to Nasdaq, as an openly competitive, stand-alone business, PrimeZone Media Network (now PrimeNewswire) distributes fewer than 5% of press releases for public companies listed on U.S. exchanges, while its two largest competitors have a combined market share of between 85 and 90 percent.[7] By forcing Nasdaq-listed issuers to prepay for 4 press releases per year, Nasdaq hopes to increase PrimeZone's market share to as much as 15 percent.[8] Likewise, Nasdaq hopes to grow the

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[6] Comments of Bruce Aust, head of Nasdaq's corporate client group, *cited in* "Nasdaq's listing fee hike sparks debate," *IR Magazine* (October 6, 2006).

[7] Proposing Release, 71 Fed. Reg. at 67413.

[8] "[If] all Nasdaq companies make use of all four press releases proposed to be offered to them, Nasdaq estimates that PR Newswire and Business Wire combined will still distribute more than 80% of press releases for public companies listed on U.S. exchanges." *Id.*

market share for Shareholder.com webcasts, not by improving the quality of these services or expanding the distribution network for the webcasts, but by making listed issuers pay for four webcasts a year, whether they want to or not.

Increasing market share in this fashion would impose burdens both on issuers and on other corporate and investor relations service providers. Nasdaq-listed issuers would be forced to choose between using a service they may not prefer and paying twice for the privilege of using a service they do. The United States Supreme Court has recognized that tying arrangements of this sort harm consumers, because

> from the standpoint of the consumer . . . the freedom to select the best bargain in the second market is impaired by his need to purchase the tying product, and perhaps by an inability to evaluate the true cost of either product when they are available only as a package.[9]

Issuers also would be harmed by the fact that, without the ability to stop paying for Nasdaq's ancillary services, they would have no power to force the exchange to correct problems in those services or to devote resources to innovation. The harm to competing service providers would derive from the fact that they could no longer vie for market share solely on the basis of the quality, scope or price of their services; they would also have to overcome the penalty imposed on their customers by Nasdaq's listing fees.

Conclusion

Thomson Financial believes in fair and open competition. These comments are not meant to suggest that Shareholder.com, PrimeNewswire or any other Nasdaq subsidiary should not be allowed to offer corporate communications and investor relations services. But Nasdaq should not be allowed to use its regulatory authority to regrade the playing field to its exclusive advantage.

Because Nasdaq's proposal would result in an inequitable allocation of fees among listed issuers and because it would restrain competition in a way that is neither necessary nor appropriate to further a legitimate regulatory objective, Thomson Financial respectfully requests that the proposal be disapproved.

Very truly yours,
/s/
Mari-Anne Pisarri

cc: Hon. Christopher Cox
Hon. Paul S. Atkins
Hon. Roel C. Campos
Hon. Annette L. Nazareth
Hon. Kathleen L. Casey

[9] *Jefferson Parish Hospital District No. 2, et al. v. Hyde*, 466 U.S. 2, 15 (1989).

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