NASDAQ®

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January 22, 2010

Ms. Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-9303

Re: SR-NASDAQ-2009-081

Dear Ms. Murphy:

This letter is submitted to provide additional information requested by the Staff of the Securities and Exchange Commission (the "SEC" or "Commission") on the above captioned proposed rule change and to respond to the second comment letter by Jesse W. Markham of Holmes Roberts & Owen LLP on behalf of Business Wire, Inc. ("Business Wire").

In its second comment letter, Business Wire, a subsidiary of Berkshire Hathaway, continues its attempt to misuse the Commission's rule review process to protect market share in an unregulated service of news dissemination (in which Business Wire is a leading supplier by market share both in the U.S. and internationally). Business Wire's second letter, which relies on unattributed sources, ignores significant portions of Nasdaq's response and raises nothing new for the Commission's consideration. Nonetheless, for the record, Nasdaq would like to respond to some factual inaccuracies that Business Wire has proffered.

First, Business Wire alleges that Nasdaq offered to reduce its listing fee for a company "if [the company] switched wire distribution."[1] This allegation is false. Nasdaq charges all companies pursuant to its Commission approved fee schedule and does not reduce listing fees for companies that use services provided by Nasdaq's "sister" company, Nasdaq OMX Corporate Services, Inc. or its subsidiaries.

Second, Business Wire repeatedly refers to a proposed 500% listing fee increase and a "monumental increase in [Nasdaq's] fee structure."[2] This characterization of Nasdaq's proposal is incorrect. The maximum proposed increase to be faced by any company already listed on Nasdaq would be $5,000, or approximately 17%. While Nasdaq understands the impact this increase can have on its listed companies, it is hardly a "monumental increase," especially when one considers that there has been no fee change over the past three years. The only aspect of Nasdaq's proposal that could be construed as a 500% change is the proposed increase in the

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[1] Letter from Markham to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, dated January 14, 2010 (the "Second Business Wire Letter") at 4.

[2] Second Business Wire Letter at 7.

application fee for a company seeking to list. But, that would not be the correct conclusion. Specifically, the application fee paid by a company reduces its entry fee dollar-for-dollar upon listing. As such, while we have proposed to increase the application fee from $5,000 to $25,000, this entire amount serves as a pre-payment, which reduces the entry fee payable upon listing, and would, therefore, not affect the overall fee a company pays to list on Nasdaq. The only company that would be affected by this increase is a company that applies for listing but does not ultimately list on Nasdaq. This limited change to the way in which the initial listing charges are collected will impact few companies, and the new application fee will remain half of the comparable fee charged by the New York Stock Exchange and approved by the Commission.[3] Since the entire application fee is fully creditable toward the entry fee, it certainly cannot be considered a monumental increase and, in any event, is supportable under the Act as a much better reflection of the level of effort and cost associated with the review of an application.

Business Wire also continues to allege that Nasdaq's proposal is somehow designed to cross-subsidize the activities of a Nasdaq OMX Corporate Services subsidiary, GlobeNewswire, Inc. Again, this is simply false. Nasdaq's proposed fee changes are not intended to cross-subsidize GlobeNewswire. In fact, GlobeNewswire is profitable on a stand-alone basis, even after considering the marketing expenses it incurs when offering products for free on a trial basis, and there is therefore no need for Nasdaq to cross-subsidize GlobeNewswire and no economically logical way for GlobeNewswire's promotions to be viewed as being subsidized by an affiliated company. Given that GlobeNewswire is profitable, the most that could plausibly be said about its promotional offerings is that they reduce GlobeNewswire's own short-term profits in an attempt to establish future business.

Finally, Business Wire now argues that the Commission should disapprove Nasdaq's proposed fee increase to prevent Nasdaq from operating its regulated activities as "'loss leaders' intended to sell more profitable services."[4] This argument defies all intuition. If the concern is with Nasdaq operating its listing and regulatory function as a "loss leader," why object to the fee increases for this function?

Nasdaq would also like to provide additional detail about the decline in the number of listed companies and the impact of that decline on Nasdaq's regulatory costs, which was mentioned in the original filing and in Nasdaq's December 23, 2009, letter. From December 31, 2006, immediately before Nasdaq's last fee increase, until December 31, 2009, the number of companies listed on Nasdaq has declined by approximately 10%, from 3,193 companies to 2,852 companies. Despite this decline, however, many of Nasdaq's costs to regulate the market have remained constant or increased. For example, Nasdaq has made a significant investment to upgrade its compliance monitoring and tracking systems to create a state of the art program that assists staff in timely detecting, prioritizing, and tracking potential non-compliance with Nasdaq's listing requirements. In addition, Nasdaq has also invested to build an online listing application portal, which improves our ability to review applications by

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3 The NYSE charges a one-time special charge of $50,000 the first time that an issuer lists a class of common shares. NYSE Listed Company Manual Section 902.03.

4 Second Business Wire Letter at 10.

communicating with other Nasdaq systems and drawing information from outside data sources, including SEC filings. As a result of the declining number of companies and applicants, the costs of these enhancements and the continued maintenance of Nasdaq's systems for reviewing applications, monitoring company listings, news disclosures, and real-time market activity must be spread over fewer listed companies and applicants.

While the number of companies has declined and the new technology will allow Nasdaq staff to be more efficient, any associated productivity gains are offset by the increasing amount of time staff must spend monitoring company filings for compliance with new requirements. For example, staff reviews proxy disclosures for compliance with Nasdaq's independent board and committee requirements. This review largely is a manual process. Further, as a result of enhancements to our compliance program and changes in the Commission's Form 8-K rules, the number of filings that are reviewed for each company has increased significantly since 2002. In that regard, Nasdaq reviewed almost 54,000 filings in 2009. In addition, a number of issues have surfaced in recent years requiring more detailed monitoring and review of certain companies, such as companies that became filing deficient due to stock-option backdating investigations and companies that traded below $1 during the temporary suspension of the bid price requirement. The real-time market surveillance workload also is not directly related to the number of listed companies, but is driven by market conditions and volatility.

If the SEC Staff has any further questions concerning our proposal, please feel free to contact me at (301) 978-8075.

Very truly yours,