NASDAQ OMX

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February 5, 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 in connection with the Securities and Exchange Commission's (the "SEC" or "Commission") review of the above captioned proposed rule change. The proposed rule change would modify the fees for listing on the NASDAQ Stock Market LLC ("Nasdaq"). The Commission's statutory mandate concerning fees, as set forth in Sections 6(b)(4) and 6(b)(5) of the Securities Exchange Act of 1934 (the "Act"), is to ensure that the rules of an exchange "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities" and "are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers."[1] Further, Section 6(b)(8) of the Act provides that the rules of an exchange cannot "impose any burden on competition not necessary or appropriate in furtherance of the purposes" of the Act.[2]

Notwithstanding the fact that not a single company that would be subject to the proposed fee changes submitted a comment objecting to them, the Commission did receive two comments from Business Wire, Inc., who is a competitor to one of Nasdaq's sister companies, NASDAQ OMX Corporate Services, Inc. ("NOCS"). In that comment, Business Wire objected to the proposed fee change because NOCS and its subsidiaries have offered certain companies a discount or free trial of their products. Although such offers are extended as a means of marketing NOCS's products and services, they typically occur in meetings and discussions about the company's choice of listing market. We further understand that the Staff may have concerns about whether, under the circumstances, such offers could be viewed as leading to an inequitable allocation of listing fees.

We do not believe such a conclusion is warranted here, and would welcome an opportunity to discuss these issues further with the Staff. However, in order to simplify the Commission's review of our proposed rule change, Nasdaq and NOCS hereby represent that effective immediately, pending further discussions with the Commission Staff, Nasdaq and NOCS will not

1 15 U.S.C. 78f(b)(4) and (5).

2 15 U.S.C. 78f(b)(8).

offer any customized packages of free or discounted services to any company. NOCS intends to continue to offer its Core Services Package[3] and may determine to offer other packages of complimentary or discounted services to categories of companies, without regard to where the company is listed or determines to list. Any future offer of free or discounted services by NOCS will explicitly and expressly provide that companies will be free to accept the offer and test NOCS's services whether or not they choose to list on Nasdaq.[4]

Given these actions, any discounts provided for NOCS products cannot be misconstrued as being offered in connection with a company's listing on Nasdaq. As such, there can be no question that the proposed fee changes provide for an equitable allocation of Nasdaq's reasonable listing fees among issuers, are not designed to permit unfair discrimination between issuers and do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[5] As described in the rule filing and our two prior letters to the Commission,[6] Nasdaq's proposed fees are in all cases equal to, or less than, the approved fees charged by other exchanges and are supported by improvements made to the market and the regulatory process, as well as by changes in the marketplace since Nasdaq's last listing fee changes. The Commission therefore should approve Nasdaq's proposal.

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

Very truly yours,

Arnold P Golub

[3] The Core Services Package provides public companies, regardless of where they are listed, a sample of NOCS services designed to support public companies on a complimentary or discounted basis. Of course no company is required to use these free samples.

[4] Nasdaq and NOCS will communicate this in the same manner that the offer is made. Thus, to the extent a permitted offer of free or discounted services is in writing, the offer will state in writing that it is not conditioned on the company's choice of listing market. The NOCS websites will advertise these offers and any mention of a permitted offer on a Nasdaq or NOCS website will also state that the offer is not conditioned on the company's choice of listing market.

[5] In addition, while we believe that Business Wire's allegations that Nasdaq's behavior raised antitrust concerns are without merit, there clearly can be no colorable allegation of "tying" the offer of free or discounted NOCS services to a Nasdaq listing given that Nasdaq and NOCS will expressly provide that any offer is not conditioned on the company's choice of listing market.

[6] Letters from Arnold P. Golub to Elizabeth M. Murphy dated December 23, 2009 and January 22, 2010.