

LEGAL UPDATE

June 2011 By: Michael T. Campoli

NASDAQ GAINS APPROVAL FOR BX VENTURE MARKET FOR SMALLER COMPANIES

The U.S. Securities and Exchange Commission recently approved the application of The NASDAQ OMX Group, Inc. to launch its new listing market, to be known as the BX Venture Market. The BX Venture Market will provide companies that do not otherwise qualify for an exchange listing – including companies that have been delisted from another market for failure to satisfy that market’s listing standards and companies that want to take a first step toward an exchange listing – with an opportunity to list and trade their securities in an environment that is designed to provide greater transparency, regulation and liquidity than the over-the-counter markets. NASDAQ expects to begin accepting listing applications during the third quarter of 2011, and to launch the BX Venture Market by the end of the year.

To be eligible for an initial listing on the BX Venture Market, an issuer must meet the following minimum quantitative standards:

	Previously Listed on U.S. National Exchange¹	Not Listed on U.S. National Exchange
Public Float	200,000 shares	200,000 shares
Public Shareholders	200 total, 100 round lot	200 total, 100 round lot
Market Value of Listed Securities	\$2 million	\$2 million
Market Makers	2	2
Bid Price	\$0.25	\$1.00

In addition, prior to obtaining a listing on the BX Venture Market, a company not previously listed on a national securities exchange must have: (i) either \$1 million in stockholders’ equity or \$5 million in total assets; (ii) a one year operating history (which limits the ability of shell companies to qualify for listing); and (iii) a plan to maintain sufficient working capital for at least 12 months after listing.

Once listed on the BX Venture Market, a company must satisfy the following quantitative continued listing standards:

Public Float	200,000 shares
Public Shareholders	200 total
Market Value of Listed Securities	\$1 million
Market Makers	2
Bid Price	\$0.25

¹ Prior to September 30, 2011, any company delisted from a national exchange since January 1, 2010 would be eligible for this standard. After launch, a company would have three months to list on the BX Venture Market after being delisted.

The BX Venture Market will also have qualitative listing standards that are comparable to those of The NASDAQ Stock Market and the other national securities exchanges, but that are targeted to smaller and earlier stage companies. For example, the listed class of securities must be registered under Section 12(b) of the Securities Exchange Act of 1934 (the “Exchange Act”), the company must be current in its Exchange Act filings, the company must have an independent audit committee, compensation decisions for executive officers must be made or recommended by independent directors, the company must hold an annual meeting of shareholders, and the company must comply with the applicable provisions of the Sarbanes-Oxley Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act.

However, companies listed on the BX Venture Market will not be subject to certain requirements generally associated with a listing on a national securities exchange, including the requirement to have a majority independent board and the requirement to obtain shareholder approval in connection with certain issuances of common stock (including issuances generally covered by the so-called “20% Rule”). In addition, securities listed on the BX Venture Market will not be exempt from state blue-sky requirements or the penny stock rules.

The foregoing is merely a discussion and is intended to provide a brief summary of the BX Venture Market. If you would like to learn more about this topic or how Pryor Cashman LLP can serve your legal needs, please contact Michael T. Campoli, Esq. at 212-326-0468, mcampli@pryorcashman.com, or the Pryor Cashman LLP attorney with whom you work.

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Michael Campoli devotes his practice to counseling public and private companies on a broad range of corporate matters, including securities law compliance, corporate formation and governance, mergers and acquisitions, public and private debt and equity financing transactions, and limited liability company and partnership counseling.

Mr. Campoli's work at Pryor Cashman has included the representation of:

- Marina Biotech, Inc. (NASDAQ: MRNA) as outside general counsel in connection with its equity and debt financings, M&A initiatives and compliance with SEC reporting requirements
- Javelin Pharmaceuticals, Inc. (NYSE Amex: JAV) as outside general counsel in connection with its equity financings and compliance with the reporting requirements of the SEC and other regulatory agencies
- Henry Schein, Inc. (NASDAQ: HSIC) in connection with the acquisition of various private companies in the medical equipment and software industries
- Cowen and Company, LLC, Rodman & Renshaw, LLC and Global Hunter Securities, LLC in connection with various underwritten public offerings for domestic and foreign issuers
- Briad Restaurant Group in its prevailing tender offer for Main Street Restaurant Group, Inc., the largest T.G.I. Friday's franchisee
- The Kushner Companies in connection with its acquisition of the office building located at 666 Fifth Avenue, New York, New York
- A private telecommunications company in connection with the issuance of a \$260 million secured note to the Rural Utilities Service of the U.S. Department of Agriculture and the concurrent placement of \$110 million of preferred stock to venture capital investors