

Securities Law Alert: NYSE Temporarily Lowers Market Capitalization Requirement

1/30/2009

The New York Stock Exchange (NYSE) announced on January 23, 2009, that it will temporarily lower its minimum market capitalization requirement¹ for securities listed on the NYSE to \$15 million.² The temporary reduction is effective through April 22, 2009; however, all other continued listing requirements will remain in effect during this period.³

Prior to this temporary rule change, companies were subject to prompt delisting if they had an average global market capitalization of less than \$25 million over a consecutive 30 trading-day period.⁴ But market volatility and an overall decline in trading prices has caused a spike in the number of companies that have fallen below the \$25 million threshold.⁵ In 2008, the NYSE delisted approximately 53 companies for failing to meet the market capitalization requirement. According to the NYSE, many of its listed companies have experienced sharp stock-price declines not because of company-specific problems, but rather because of unpredictable market conditions.⁶ The NYSE thus believes that the temporary reduction will enable companies of suitable size and quality to remain listed during this period of market instability.⁷

The NYSE decided against a complete moratorium on the \$25 million listing requirement because it believed that companies whose market capitalizations decline to a level below \$15 million are not suitable for continued listing on the NYSE.⁸ The temporary reduction marks a return to the NYSE's former market capitalization requirement as revised in 2004.⁹ Consequently, the NYSE believes that it has adequate experience with continued listing of companies whose average global market capitalization is between \$15 million and \$25 million, and is comfortable allowing these companies to continue to be listed during the temporary reduction period.¹⁰

The NYSE's temporary rule change comes just one month after the NASDAQ Stock Market extended its temporary suspension of the continued listing requirements regarding bid price and market value of publicly held shares.¹¹ NASDAQ's suspension is effective through April 19, 2009.¹²

Securities and Exchange Commission (SEC) administrative rules require that the NYSE file its proposed rule change with the SEC and then comply with a 30-day operative waiting period.¹³ The NYSE, however, has requested that the SEC waive the delay period and expects the SEC to effectuate the waiver.¹⁴

Endnotes

¹ Market capitalization refers to the value of all of a company's outstanding shares.

² See SR-NYSE-2009-06.

³ See *id.* at 4.

⁴ See NYSE Listed Company Manual § 802.01B (2004).

⁵ See SR-NYSE-2009-06 at 4.

⁶ See *id.* at 5.

⁷ See *id.*

⁸ See *id.*

⁹ See *id.* at 5.

¹⁰ See *id.* at 6.

¹¹ See *NASDAQ Suspends Listing Requirements* (Global Financial Crisis Alert, Mintz Levin, Oct. 24, 2008).

¹² See *id.*

¹³ See 17 C.F.R. § 240.19b-4(f)(6).

¹⁴ See SR-NYSE-2009-06 at 7.