

Securities Law Alert: Recent NASDAQ Updates on Listing Rules and Related Matters

7/21/2009

The NASDAQ Stock Market (NASDAQ) recently held its annual “NASDAQ Speaks” webcast, in which it provided updates that are of interest to NASDAQ-listed companies on what is happening at NASDAQ. Following are some highlights from the webcast:

Online New Listing Applications

NASDAQ has entered the information age with a new web-based “application center” for the online submission of new listing applications (including applications to transfer listings to NASDAQ from other exchanges). It also provides a convenient “portal” for symbol reservations, access to the listing rules, forms, FAQs and other relevant information. More information is available [here](#). Note that this web-based system does not yet allow for the submission of additional listing applications by companies that are already traded on NASDAQ.

Late Filers

In October 2008, NASDAQ revised its rules to provide a more reasonable process for companies that are delinquent in their periodic filing obligations to regain compliance. Instead of immediately receiving a delisting letter and requiring issuers to go through an appeals process to seek relief, companies are now given an opportunity to submit a plan to regain compliance, and the NASDAQ staff, rather than a hearings panel, can grant issuers an extension of up to 180 days to regain compliance before issuing a delisting notice. More information is available [here](#).

Extension of \$1 Minimum Bid Price Suspension

NASDAQ’s suspension of the \$1 minimum bid price and market value of publicly held shares rules was recently further extended through July 31, 2009. NASDAQ has indicated that it does not expect to grant any further extensions. The enforcement of these rules will now resume on Monday, August 3, 2009. More information is available [here](#).

Proposed Additional Changes to Grace Periods, etc.

NASDAQ has proposed further changes to its listing rules, subject to SEC approval, to provide companies who fall out of compliance with the continued listing rules, such as the minimum bid price and market value of publicly held shares requirements, more flexibility and time to regain compliance before being delisted. The proposed changes include allowing 60 days to submit a

plan to regain compliance, permitting the staff to grant extensions for periods of up to 180 days, and other relief. A full copy of the proposed amendments is available [here](#).

NASDAQ Rulebook

The NASDAQ rulebook was revised, effective April 13, 2009, primarily to reorder and renumber the listing rules. The listing and corporate governance rules are now in the 5000s instead of the 4000s. For example, the corporate governance requirements are now in the 5600 series of rules. A copy of the revised rulebook is available [here](#). NASDAQ has also provided an over 400-page table that cross-references all of the old rules to the new rules, available [here](#).

Foreign Private Issuer Corporate Governance

Following recent changes to the NASDAQ rules, foreign private issuers can continue to follow their home country governance practices in lieu of NASDAQ requirements, but such issuers must include disclosure as to which NASDAQ corporate governance requirements they do not follow in their Annual Reports on Form 20-F (which harmonizes to the SEC's new requirements for Forms 20-F), rather than providing this disclosure on their websites.

Shareholder Approval Rules

While NASDAQ did not provide any new guidance on its shareholder approval rules, it reminded issuers about the shareholder approval requirements for stock option repricings (if repricings are not authorized by the stock plan), and for issuances of 20% or more of outstanding securities at a price less than the greater of book or market value per share (with NASDAQ emphasizing that book value may sometimes exceed market value). It also reaffirmed that the financial viability exception is only available in extreme situations, such as when issuers are approaching bankruptcy or would need to cease operations.

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Please contact Mintz Levin if you have any questions regarding the information presented above.

For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

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