

Securities Law Alert: NASDAQ Extends Suspension of Continued Listing Rules

4/1/2009

NASDAQ Stock Market LLC (“Nasdaq”) announced on March 23, 2009 that it will extend its temporary suspension of the continued listing rules that require a minimum closing bid and market value of publicly held shares.¹ This extension is Nasdaq’s second extension since the downturn in the financial markets in October 2008. Under the new extension, the suspension of these rules is effective through July 19, 2009.²

In October 2008, Nasdaq temporarily suspended the continued listing requirements relating to minimum bid price and market value of publicly held shares.³ This initial suspension was designed to provide temporary relief to companies during a period of extreme market volatility and decreased investor confidence.⁴ However, since the initial suspension, the markets have yet to fundamentally improve, thereby inducing Nasdaq to extend the suspension twice: first in December 2008, and then again on March 23, 2009. Securities covered by the extension include:

1. common stock;
2. preferred stock;
3. secondary classes of common stock;
4. shares or certificates of beneficial interest of trusts;
5. limited partnership interests;
6. American Depository Receipts; and
7. the equivalents of each.⁵

Prior to the temporary rule change, companies were subject to prompt delisting if their listed securities failed to achieve at least a \$1 per share closing bid price⁶ and a minimum market value for a period of 30 consecutive business days.⁷ But continued market turbulence together with depressed investor confidence has continued to keep the prices of many listed securities at unprecedented low levels. According to Nasdaq, the number of securities trading below \$1 and between \$1 and \$2 per share has increased since the initial suspension, and it is believed that the cause for the sharp stock-price declines is not due to company-specific problems, but rather to historically unpredictable market conditions.⁸ Thus, Nasdaq believes that the continued extension will permit companies to focus their attention on the maintenance of their businesses, instead of on compliance with market-based requirements that are beyond their control in the current financial environment.⁹

During the suspension period, companies will not be cited for new deficiencies in bid price or market value of publicly held shares.¹⁰ Also, any company already in a compliance period or in the hearings process for deficiencies relating to bid price or market value of publicly held shares will remain at the same stage of the process until the end of the suspension.¹¹ Following the

temporary suspension, any new deficiencies regarding the bid price or market value of publicly held shares requirements will be determined using data starting on July 20, 2009.¹² Companies, however, will continue to be subject to delisting for failure to comply with other listing requirements.¹³

Endnotes

1 See SR-NASDAQ-2009-026.

2 See SR-NASDAQ-2009-026 at 6.

3 See SR-NASDAQ-2008-082.

4 See SR-NASDAQ-2008-082 at 9.

5 See SR-NASDAQ-2008-082 at 4.

6 See Nasdaq Stock Market Rules § 4310(c)(4).

7 See Nasdaq Stock Market Rules §§ 4310(c)(8), 4320(e)(5), 4445(a)(2), 4450(b)(3), 4450(h)(2).

8 See SR-NASDAQ-2009-026 at 5-6.

9 See SR-NASDAQ-2008-082 at 7.

10 See SR-NASDAQ-2009-026 at 6.

11 See SR-NASDAQ-2009-026 at 7.

12 See SR-NASDAQ-2009-026 at 7.

13 See SR-NASDAQ-2009-026 at 6 n. 11.

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