

Global Financial Crisis Alert: NASDAQ Extends Temporary Suspension of Certain Continued Listing Requirements

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The Nasdaq Stock Market LLC (“Nasdaq”) announced on December 18, 2008, that it would extend its temporary suspension of the continued listing requirements related to bid price and market value of publicly held shares for listing on the Nasdaq Stock Market through April 19, 2009.¹ As discussed in our October 20, 2008 Alert, “Nasdaq Suspends Listing Requirements,”² Nasdaq initially suspended these listing requirements until January 16, 2009.³

As part of this extended suspension, companies would not be cited for new bid price⁴ or market value⁵ deficiencies relating to listed shares during the suspension period. Nasdaq intends that following the suspension, bid price and market value deficiencies will be determined using data starting on April 20, 2009 and that Nasdaq will monitor securities to determine if they regain compliance during the temporary suspension.⁶

For companies already in a compliance period or in the hearing process for bid price or market value deficiencies when the suspension originally took effect in October, the time periods and processes will remain suspended with respect to those requirements until April 19, 2009. Companies in compliance periods prior to the suspension, starting on April 20, 2009, will receive the balance of any pending compliance period in effect at the time of the suspension to regain compliance if not achieved during the suspension.⁷ Likewise, companies in the hearing process prior to the suspension will resume that process on April 20, 2009 at the same stage they were in when the suspension went into effect.⁸

The suspension was initially implemented to provide issuers of specific securities temporary relief from the bid price and market value requirements for listing on Nasdaq.⁹ Securities covered by the suspension include:

- common stock;
- preferred stock;
- secondary classes of common stock;
- shares or certificates of beneficial interest of trusts;
- limited partnership interests;
- American Depositary Receipts; and
- the equivalents of each.¹⁰

Nasdaq believes its actions will “permit companies to focus on running their businesses, rather than satisfying market-based requirements that are largely beyond their control in the current environment.” Further, it will “allow investors to buy shares of some of these lower-priced securities without fear that the company will receive a delisting notification or be delisted in the very near term.”¹¹

Nasdaq commented that “[m]arket conditions have not improved since the suspension began and, in fact, both the number of securities trading below \$1 and the number of securities trading between \$1 and \$2 on Nasdaq has [sic] increased.”¹² Nasdaq indicated that it continues to believe that there has been no fundamental change in the underlying business model or prospects for many of these companies, and that a decline in general investor confidence has resulted in depressed pricing for companies that otherwise remain suitable for continued listing. Moreover, Nasdaq commented that the same conditions continue to make it difficult for companies to successfully implement a plan to regain compliance with the price or market value of publicly held shares tests.¹³

Nasdaq’s proposal, filed with the Securities and Exchange Commission (SEC), requests that the SEC waive the 30-day operative delay period required by Rule 19b-4 under the Securities Exchange Act of 1934, as amended.¹⁴

Mintz Levin will continue to monitor developments relating to Nasdaq’s suspension of these listing requirements, updating Global Financial Crisis Central as they occur. If you have questions regarding this alert, please contact Steve Ganis at (617) 348-1672, Mo Cowan at (617) 348-3003, or Megan Gates at (617) 348-4443.

Endnotes

¹See SR-NASDAQ-2008-099.

²See *NASDAQ Suspends Listing Requirements* (Global Financial Crisis Alert, Mintz Levin, Oct. 24, 2008).

³See SR-NASDAQ-2008-082.

⁴According to Nasdaq’s rules, a security is considered deficient if it fails to achieve at least a \$1 closing bid price for a period of 30 consecutive business days. Nasdaq’s requirements relating to bid price are set forth in Rules 4310(c)(4), 4320(e)(2)(E)(ii), 4450(a)(5), 4450(b)(4), and 4450(h)(3), and the related compliance periods are set forth in Rules 4310(c)(8)(D), 4320(e)(2)(E)(ii), and 4450(e)(2).

⁵According to Nasdaq’s rules, a security is considered deficient if it fails to achieve the minimum market value of publicly held shares requirement for a period of 30 consecutive business days. Nasdaq’s requirements relating to market value of publicly held shares are set forth in Rules 4310(c)(8), 4320(e)(5), 4450(a)(2), 4450(b)(3), and 4450(h)(2), and the related compliance periods are set forth in Rules 4310(c)(8)(B) and 4450(e)(1).

⁶See SR-NASDAQ-2008-099 at 6-7.

⁷*Id.* at 6; See SR-NASDAQ-2008-082 at 6 and n.12.

⁸See SR-NASDAQ-2008-099 at 6-7; SR-NASDAQ-2008-082 at 6-7.

⁹SR-NASDAQ-2008-082 at 4.

¹⁰*Id.*; SR-NASDAQ-2008-099 at 4.

¹¹SR-NASDAQ-2008-082 at 7; SR-NASDAQ-2008-099 at 7.

¹²SR-NASDAQ-2008-099 at 5.

¹³See *id.*

¹⁴See *id.* at 3.

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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