

Corporate & Financial Weekly Digest

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NASDAQ Proposes Tougher Listing Standards for Issuers Following Reverse Mergers

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On April 18, the NASDAQ Stock Market LLC filed a proposed rule change with the Securities and Exchange Commission to adopt additional listing requirements for companies that have become public through transactions in which unlisted private operating companies merge into publicly traded shell companies, commonly known as reverse mergers. According to NASDAQ, proposed Rule 5110(c) was promulgated in response to widespread concerns of fraudulent behavior by, and unreliable financial statements of, reverse merger companies.

Proposed Rule 5110(c) would permit a company formed through such a reverse merger to submit an application for initial listing on a NASDAQ market only after that company has (1) traded for no less than six months in the over-the-counter market or on another national securities exchange or listed foreign market following the filing with the SEC or other regulatory authority of audited financial statements for the combined company, and (2) maintained a bid price of at least \$4 per share on at least 30 of the 60 trading days immediately preceding the filing of the initial listing application.

The proposed rule also provides that a reverse merger company would only be approved for listing if, following the reverse merger transaction, it has timely filed (1) in the case of a domestic issuer, at least two periodic financial reports with the SEC or other regulatory authority, or (2) in the case of a foreign private issuer, one or more reports including financial statements for a period of not less than six months.

Proposed Rule 5110(c) would not apply to reverse merger companies applying for listing on NASDAQ in connection with a firm commitment underwritten public offering.

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