

ALERTS AND UPDATES

Modifications to Press-Release Requirements for NASDAQ-Listed Companies

April 1, 2010

The U.S. Securities and Exchange Commission (the "SEC") recently approved changes to NASDAQ rules, relating to press-release requirements for NASDAQ-listed companies.¹ NASDAQ rules previously required a listed company to disclose certain information by a press release or through the news media. The rule modifications amend these requirements by eliminating requirements that are duplicative of Form 8-K requirements by permitting companies to fulfill their NASDAQ disclosure obligations either through a press release or, where required by SEC rules, by filing a Form 8-K. The SEC announced in a [release](#) that these modifications to the NASDAQ rules became effective on March 15, 2010.

Rule Changes

Form 8-K

The amended rules permit companies to satisfy their NASDAQ public-disclosure requirements by making the following disclosures by filing a Form 8-K where required by the SEC. To the extent not required by SEC rules, disclosure can then be made by issuing a press release.

- Receipt of: (1) a notice that the company does not meet a listing standard, (2) a notice that the staff at NASDAQ intends to delist the company or (3) a public reprimand letter.² However, if the company receives a notice that it is late in filing a periodic report with the SEC, NASDAQ rules require the company to issue a press release regarding this notice, in addition to filing any Form 8-K required by SEC rules.³
- Receipt of an exception to the shareholder approval requirements because compliance would jeopardize the company's financial viability.⁴ It is important to note that NASDAQ is retaining its current requirement that companies receiving such an exception are required to mail this notice to all shareholders at least 10 days before issuing securities in reliance on the exception.
- Any change in the terms of a listed unit.⁵

Form 6-K

Under the prior rules, foreign private issuers were required to disclose interim financial results in both a Form 6-K and a press release. The amended rules now require disclosure only in a Form 6-K and eliminate the requirement to disclose interim financial results in a press release.⁶ A foreign private issuer may voluntarily provide disclosure in a press release.

Going Concern Opinion

The amended rules eliminate the requirement that a company must issue a press release announcing the receipt of an audit opinion expressing doubt about the ability of the company to continue as a going concern.⁷ The SEC believes that publication of the audit opinion in the annual filing, which is required to be filed with the SEC and distributed to all shareholders, provides broad notice to investors. Furthermore, if a company does not include the audit opinion in its annual filing, NASDAQ would consider the filing deficient and move to delist the company.

Notification Changes

In an effort to streamline notification procedures, the amended rules eliminate the requirement to notify multiple NASDAQ departments before issuing certain disclosures. The amended rules now require companies only to notify NASDAQ's MarketWatch Department prior to issuing such disclosures.⁸

For Further Information

If you have any questions regarding the modifications to the NASDAQ rules presented above, including how they may affect your company, please contact one of the [members](#) of the [Securities Law Practice Group](#) or the lawyer with whom you are regularly in contact.

Notes

1. See SEC Release No. 34-61713; File No. SR-NASDAQ-2010-006 (March 15, 2010).
2. See NASDAQ Marketplace Rules 5250(b)(2), 5810(b), 5840(k) and IM-5810-1.
3. See NASDAQ Marketplace Rule 5810(b).
4. See NASDAQ Marketplace Rule 5635(f).
5. See NASDAQ Marketplace Rule 5225(a)(3).
6. See NASDAQ Marketplace Rule 5250(c)(2).
7. See NASDAQ Marketplace Rule 5250(b)(2).
8. See NASDAQ Marketplace Rule 5810(b) and 5840(k).