

## NASDAQ's BX Venture Market — A New Listing Option for Smaller Companies

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The NASDAQ OMX Group received approval in May 2011 from the SEC to launch its new listing market, the BX Venture Market. The BX Venture Market is intended to serve as a new listing option for early-stage and smaller companies that do not qualify for listing on national securities exchanges. The objective of the BX Venture Market is to provide a more regulated and more transparent marketplace than those available in the over-the-counter markets.

NASDAQ expects to begin accepting listing applications later in 2011 and to launch the new market in 2012. Companies will be able to list common and preferred stock, ordinary shares and ADRs, trust and limited partnership interests, units, rights and warrants.

Potential companies for listing on this new market include those currently trading on an over-the-counter market (such as the OTC Bulletin Board or the OTC Pink Sheets), companies that have been or will be delisted by another market for failure to meet that market's listing standards, and smaller, less-traded companies seeking to increase liquidity.

The BX Venture Market features less rigorous quantitative listing requirements, but generally similar qualitative listing requirements as those of national securities exchanges.

### Qualitative Requirements

Companies must meet the following qualitative listing requirements, among others, related to corporate governance to list on the BX Venture Market:

- The listed security must be registered under Section 12(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and the company must be current in its periodic filings with the SEC
- Listed securities must be eligible for a Direct Registration program operated by a clearing agency registered under Section 17A of the Exchange Act for the prompt, accurate settlement of securities transactions
- The company must hold annual stockholder meetings and must solicit proxies
- The company must obtain stockholder approval for equity compensation arrangements, and the company's independent directors must make or recommend compensation decisions for executive officers
- The company must have a fully independent audit committee comprised of at least three independent directors
- The company must have a code of conduct applicable to all directors, officers, and employees, and all related party transactions must be reviewed by independent directors

Significantly, BX Venture Market-listed companies will not be required to have a majority independent board or an independent nominating committee, and companies will be permitted to phase in compliance with independent director requirements. In addition, BX Venture Market-listed companies are not subject to the "20% Rule," which requires companies to obtain stockholder approval for certain private placement issuances at less than market value.

## Quantitative Requirements

Companies that list on the BX Venture Market must meet the following financial standards, which are set lower than the requirements of other national securities exchanges:

- Two market makers
- 200,000 publicly held shares
- 200 public stockholders, at least 100 of which must be round-lot holders for initial listing, and 200 public stockholders for continued listing
- A market value of listed securities of at least \$2 million for initial listing and \$1 million for continued listing
- For initial listing, a minimum initial price of \$0.25 per share for securities previously listed on a national securities exchange and \$1.00 per share for securities not previously listed on a national securities exchange
- For continued listing, securities will be required to maintain a minimum \$0.25 per share bid price; if the security does not maintain a minimum \$0.25 per share bid price for 20 consecutive trading days, the company would be subject to delisting  
In addition, a company not previously listed must have at least a one-year operating history, and a minimum of either \$1 million

in shareholders' equity or \$5 million in total assets, and must demonstrate that it has sufficient working capital for its business for at least 12 months after the first day of listing.

Securities listed on the BX Venture Market are considered "penny stocks" and therefore will be subject to the SEC penny stock rules. In addition, unlike securities on other national securities exchanges, it should be noted that securities listed on the BX Venture Market are not exempt from state blue sky rules. Accordingly, such securities must be registered with state rules governing the sale and offering of securities. BX Venture Market-listed companies will be prohibited from representing that they are listed on a NASDAQ market and will be subject to delisting for violating this prohibition.

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