

Corporate Governance Commentary

December 2008

NASDAQ Extends Suspension of Listing Requirements in Response to Continued Economic Turmoil Until April 20, 2009

On December 19, 2008, the NASDAQ Stock Market extended the suspension of its continued listing requirements regarding minimum bid price¹ and market value of publicly held shares² until Monday, April 20, 2009.³

NASDAQ previously suspended enforcement of these requirements on October 16, 2008 as a result of the extraordinary turmoil in the global economy and capital markets. The original suspension was scheduled to expire, and enforcement was scheduled to resume, on January 20, 2009.

NASDAQ will continue the policies that it implemented as part of its original suspension, including:

- NASDAQ will not cite any new deficiencies in minimum bid price or market value of publicly held shares.
- The time allowed to listed issuers who had breached these requirements and were already in a related remedial period or in the hearings process at the start of the original suspension on October 16, 2008 will remain at the same stage of the remedial period or hearings process until the suspension is lifted.⁴ Once enforcement of these requirements resumes on April 20, 2009, listed issuers will receive the balance of any remedial period in effect at the start of the original suspension.
- Following the temporary suspension, any new deficiencies with respect to these requirements would be determined using data starting on April 20, 2009.
- NASDAQ will not consider the bid price or market value of publicly held shares for the period before or during the suspension with respect to a listed issuer that was not yet non-compliant with those requirements at the start of the original suspension on October 16, 2008.

For example, if a listed issuer had received a notice of deficiency with respect to the minimum bid price requirement on October 15, 2008, the issuer would still have 180 days to regain compliance beginning on April 20, 2009.⁵ However, if a listed issuer's closing bid price had fallen below \$1.00 for less than 30 consecutive business days ending on October 15, 2008, those days would not be counted and the 30-business day count with respect to the minimum bid price requirement would be reset beginning on April 20, 2009.

Endnotes

¹ See NASDAQ Marketplace Rules 4310(c)(4), 4320(e)(2)(E)(ii), 4450(a)(5), 4450(b)(4) and 4450(h)(3). The related remedial periods are described in Rules 4310(c)(8)(D), 4320(e)(2)(E)(ii) and 4450(e)(2). Under these rules, a security is considered deficient if it fails to achieve at least a \$1.00 closing bid price for a period of 30 consecutive business days. Once deficient, all listed issuers are provided one automatic 180-day period to regain compliance. Thereafter, issuers listed on the NASDAQ Capital Market can receive an additional 180-day remedial period if they comply with all NASDAQ Capital Market initial listing requirements except bid price. Securities listed on the NASDAQ Global Market may transfer to the NASDAQ Capital Market, if they comply with all NASDAQ Capital Market initial listing requirements except bid price, to take advantage of the second 180-day remedial

period. An issuer can regain compliance by achieving a \$1.00 closing bid price for a minimum of 10 consecutive business days.

²See NASDAQ Marketplace Rules 4310(c)(7), 4320(e)(5), 4450(a)(2), 4450(b)(3) and 4450(h)(2). The related remedial periods are described in Rules 4310(c)(8)(B) and 4450(e)(1). Under these 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. Thereafter, listed issuers have a remedial period of 90 calendar days to achieve compliance by meeting the applicable standard for a minimum of 10 consecutive business days.

³NASDAQ requested the extension in a filing with the Securities and Exchange Commission that is expected to become immediately effective pursuant to SEC regulations. The SEC filing requested the extension until Sunday, April 19, 2009. As announced in a separate press release, enforcement of the minimum bid price and market value of publicly held shares continued listing requirements would resume on Monday, April 20, 2009. The suspended requirements apply to common stock, preferred stock, secondary classes of common stock, shares or certificates of beneficial interest of trusts, limited partnership interests, American Depositary Receipts and their equivalents.

The text of NASDAQ's filing with the SEC is available at:
<http://www.cchwallstreet.com/NASDAQ/pdf/nasdaq-filings/2008/SR-NASDAQ-2008-099.pdf>.

The text of the NASDAQ press release is available at:
<http://www.nasdaq.com/newsroom/news/newsroomnewsStory.aspx?textpath=pr2008\ACQPMZ200812190900PRIMZONEFULLFEED156674.htm&year=12/19/2008%20+9%3a00AM>.

⁴Such issuers, however, are eligible to regain compliance during the suspension period if the relevant criteria are satisfied prior to April 20, 2009.

⁵See note 1, above.

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