

Corporate Governance Commentary

February 2009

New York Stock Exchange Temporarily Lowers Minimum Average Global Market Capitalization Continued Listing Requirement to \$15 Million through April 22, 2009

On January 27, 2009, the US Securities and Exchange Commission accepted a proposed rule change¹ from the New York Stock Exchange that temporarily lowered the NYSE's continued listing requirement regarding minimum average global market capitalization² from \$25 million to \$15 million. The temporary reduction became effective on January 22, 2009 and will apply through Wednesday, April 22, 2009.

In response to the extreme market turbulence of the past several months and the precipitous decline in trading prices of many securities,³ the NYSE has implemented the following policies:

- The NYSE will not promptly delist an issuer (including limited partnerships and REITs) for failing to comply with its minimum average global market capitalization continued listing requirement until such issuer has an average global market capitalization over a 30 consecutive trading day period of less than \$15 million.⁴
- The 30 consecutive trading day period under evaluation includes trading days before January 22, 2009. For example, an issuer whose 30 consecutive trading day average global market capitalization fell below \$15 million on February 9, 2009 will be subject to delisting.
- The lowered \$15 million average global market capitalization requirement will apply to any issuer for which the NYSE has not yet announced a suspension of trading pending delisting by January 22, 2009, including any issuer whose suspension for non-compliance with the higher \$25 million requirement had been stayed pending the outcome of the appeals process. If the sole basis for delisting such issuers is non-compliance with the higher \$25 million average global market capitalization requirement, the NYSE staff will inform these issuers in writing that it is withdrawing its delisting determination and that the appeal is now moot.
- All other NYSE continued listing criteria will continue to apply, and issuers that satisfy the reduced average global market capitalization requirement through April 22, 2009 nonetheless may be subject to delisting for non-compliance with other quantitative standards or pursuant to other criteria.⁵

Endnotes

¹The NYSE requested the temporary modification in an SEC filing that became retroactively effective as of January 22, 2009 pursuant to SEC regulations.

The text of the NYSE's filing with the SEC is available at:
[http://apps.nyse.com/commdata/pub19b4.nsf/docs/5B3EFAC25244A8BA8525754B00661D2A/\\$FILE/NYSE-2009-06.pdf](http://apps.nyse.com/commdata/pub19b4.nsf/docs/5B3EFAC25244A8BA8525754B00661D2A/$FILE/NYSE-2009-06.pdf).

The SEC's notice of the filing is available at:
<http://www.sec.gov/rules/sro/nyse/2009/34-59299.pdf>.

The text of the NYSE press release relating to the filing is available at:
<http://www.nyse.com/press/1232709549311.html>.

²See NYSE Listed Company Manual Section 802.01B, which provides that the NYSE will promptly delist any issuer (including a limited partnership or real estate investment trust (REIT)) that fails to maintain the required minimum average global market capitalization over a consecutive 30 trading day period, regardless of the original listing standard under which it listed.

In its filing, the NYSE noted that it adopted its \$25 million average global market capitalization requirement in 2004, and that the requirement prior to that date was \$15 million. See Securities Exchange Act Release No. 49154 (January 29, 2004), 69 FR 5633 (February 5, 2004) (SR-NYSE-2003-43). The NYSE stated that it chose to lower the average global market capitalization requirement temporarily rather than to suspend it entirely because it continues to believe that issuers with market capitalizations below \$15 million are not suitable for continued listing on the NYSE, even at this time.

³The NYSE also noted that, unlike its other quantitative listing standards, Section 802.01B of the NYSE Listed Company Manual does not provide issuers with any grace period in which to take steps to cure non-compliance.

⁴Any issuer whose 30 consecutive trading day average global market capitalization fell below \$15 million before January 22, 2009 will be subject to delisting. See NYSE Listed Company Manual Section 804 for a description of the NYSE's delisting procedures.

⁵See NYSE Listed Company Manual Section 802.01.

If you have any questions regarding this *Commentary*, please contact the Latham & Watkins LLP representatives listed below.

[Cathy Birkeland](#)

[Scott Hodgkins](#)

[Steven Stokdyk](#)

[Scott Herlihy](#)

[Robert Koenig](#)

[Roderick Branch](#)

Corporate Governance Commentary is published by Latham & Watkins as a news reporting service to clients and other friends. The information contained in this publication should not be construed as legal advice. Should further analysis or explanation of the subject matter be required, please contact the attorneys listed above or the attorney whom you normally consult. A complete list of our publications can be found on our Web site at www.lw.com. If you wish to update your contact details or customize the information you receive from Latham & Watkins, please visit www.lw.com/LathamMail.aspx to subscribe to our global client mailings program.

This e-mail was generated from the Latham & Watkins LLP office located at 555 West Fifth Street, Suite 800, Los Angeles, CA 90013-1010; Phone: +1.213.891.1200. Latham & Watkins operates as a limited liability partnership worldwide with an affiliated limited liability partnership conducting the practice in the United Kingdom, France and Italy. Under New York's Code of Professional Responsibility, portions of this communication contain attorney advertising. Prior results do not guarantee a similar outcome. Results depend upon a variety of factors unique to each representation. Please direct all inquiries regarding our conduct under New York's Disciplinary Rules to Latham & Watkins LLP, 885 Third Avenue, New York, NY 10022-4834, Phone: +1.212.906.1200. © Copyright 2009 Latham & Watkins. All Rights Reserved.