

Corporate Governance Commentary

March 2009

New York Stock Exchange Extends, Expands Temporary Easing of Continued Listing Standards Until June 30, 2009

On February 26, 2009, the New York Stock Exchange extended the temporary lowering of its minimum average global market capitalization continued listing requirement¹ and temporarily suspended the application of its minimum average closing price continued listing requirement.² The revisions to these standards will remain in place until June 30, 2009.³

The NYSE had previously lowered its minimum average global market capitalization standard from \$25 million to \$15 million on January 22, 2009.⁴ Effective February 26, 2009, the NYSE also suspended enforcement of its \$1.00 minimum average closing price continued listing standard for capital or common stock.

The NYSE took these actions in response to the extreme market turbulence of the past several months and the precipitous decline in trading prices of many securities, which have resulted in an unusually high number of non-compliant issuers as compared to historical levels.⁵

In connection with these rule revisions, the NYSE will observe the following policies until June 30, 2009:

Minimum Average Global Market Capitalization

- 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.⁶
- The lowered \$15 million average global market capitalization requirement will apply to any issuer for which the NYSE had not yet announced a suspension of trading pending delisting before 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.

Minimum Average Closing Price

- The NYSE will not cite an issuer for non-compliance if the average closing price of its listed security falls below \$1.00 over a consecutive 30 trading day period.⁷
- Listed issuers that had breached the minimum average closing price requirement and were already in a related remedial period at the start of the suspension on February 26, 2009 will remain at the same stage of the remedial process until the suspension is lifted.⁸ Once enforcement of the minimum average closing price requirement resumes on July 1, 2009, these issuers will receive the balance of any remedial period in effect at the start of the suspension.⁹

- Following the temporary suspension, any new deficiencies with the minimum average closing price requirement will be determined using data starting on June 30, 2009. The NYSE will not consider closing prices for the period before or during the suspension with respect to a listed issuer that had not yet received a notice of non-compliance with the minimum average closing price requirement at the start of the suspension on February 26, 2009.

All other NYSE continued listing requirements will continue to apply, and issuers may be subject to delisting for non-compliance with other quantitative standards or pursuant to other criteria.¹⁰

If you have any questions regarding this Commentary, please contact the Latham & Watkins LLP representatives listed at the end of this e-mail.

Endnotes

¹ See NYSE Listed Company Manual Section 802.01B. Under this rule, 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.

² See NYSE Listed Company Manual Section 802.01C. Under this rule, an issuer's listed capital or common stock is considered non-compliant if it fails to achieve an average closing price of at least \$1.00 per share for a period of 30 consecutive trading days, as reported on the NYSE's consolidated tape. Once notified of non-compliance, all listed issuers are provided one automatic six-month remedial period to regain compliance. If, on the last day of the six-month remedial period, an issuer achieves both a \$1.00 closing price and a \$1.00 average closing price over the preceding 30 trading days, the issuer will be deemed to have regained compliance and the NYSE will not commence suspension and delisting procedures. An issuer can also regain compliance during the remedial period under circumstances requiring shareholder action (such as a reverse stock split in some cases) if the closing price of its listed security promptly exceeds \$1.00 per share following the action and the price remains above that level for at least the following 30 trading days.

³ The NYSE requested the rule revisions in a filing with the US Securities and Exchange Commission that is expected to become immediately effective 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/3415B1AA4F6D61848525756900762294/\\$FILE/NYSE-2009-21.pdf](http://apps.nyse.com/commdata/pub19b4.nsf/docs/3415B1AA4F6D61848525756900762294/$FILE/NYSE-2009-21.pdf)

The text of the NYSE press release relating to the filing is available at:

<http://www.nyse.com/press/1235647172819.html>

⁴ The lowered minimum average global market capitalization requirement was originally scheduled to expire, and enforcement of the requirement was scheduled to resume, on April 23, 2009.

⁵ See pages 3 and 6 of the NYSE's filing with the SEC.

⁶ See NYSE Listed Company Manual Section 804 for a description of the NYSE's delisting procedures.

⁷ The NYSE will, however, continue to identify issuers that were in a remedial period for non-compliance with the minimum average closing price requirement at the start of the suspension on February 26, 2009, including by continuing to append an indicator to the issuer's ticker symbol and by naming the issuer on a list of non-compliant issuers posted to the NYSE's Web site (unless the issuer regains compliance during the suspension, as described below).

⁸ Such issuers, however, are eligible to regain compliance during the suspension period if the relevant criteria are satisfied prior to June 30, 2009. See note 2, above. In its filing with the SEC, the NYSE noted that there were not currently any issuers in the NYSE's delisting appeals process for failing to comply with the minimum average closing price requirement.

⁹ For example, if a listed issuer received a non-compliance notice with respect to the minimum average closing price requirement on February 25, 2009, the issuer would still have six months to regain compliance beginning on July 1, 2009. See note 2, above.

¹⁰ See NYSE Listed Company Manual Section 802.01.

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

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