

Management Alert

NASDAQ Recent Developments

NASDAQ Launches New Market Tier: NASDAQ Global Select

On July 3, 2006, NASDAQ launched the new NASDAQ Global Select Market tier for public companies. In conjunction with the creation of the new tier, NASDAQ will rename the NASDAQ National Market to the NASDAQ Global Market. The new NASDAQ Global Select Market is being touted for public companies that meet the highest listing standards in the world, with measures including market value, liquidity and earnings. NASDAQ Global Select Market companies will receive an enhanced package of services from NASDAQ to support public companies in communication, visibility, management and board support.

With the addition of the NASDAQ Global Select Market, NASDAQ will offer three market tiers for public companies:

- **NASDAQ Global Select Market (NGS)**—consisting of approximately 1,200 companies;
- **NASDAQ Global Market (NGM)**—consisting of approximately 1,450 companies; and
- **NASDAQ Capital Market (NCM)**—consisting of approximately 550 companies.

Under NASDAQ's market structure, the NASDAQ Global Market is a distinct tier of NASDAQ that is comprised of two segments: NASDAQ Global Select Market and NASDAQ Global Market. The NASDAQ Global Market, including the NASDAQ Global Select Market tier, is the successor to the NASDAQ National Market. NASDAQ will continue to apply its existing corporate governance standards to all three tiers of its market. Although NASDAQ will continue its Composite Index, NASDAQ will create two new indexes to track the NASDAQ Global Select and NASDAQ Global Market tiers.

Initial Listing Qualifications NASDAQ has unilaterally designated qualified NASDAQ Global Market companies to the new NASDAQ Global Select Market. A list of the NASDAQ Global Select Market companies is available at <http://www.nasdaq.com/asp/symbols.asp?exchange=NGS>. The initial listing standards for the new NASDAQ Global Select Market tier are provided in [Table 1](#). The initial listing standards for the NASDAQ Global Market tier and the NASDAQ Capital Market are provided in [Table 2](#) and [Table 3](#), respectively.

Continued Listing Qualifications Continued listing requirements for NASDAQ Global Select Market companies will be the same as they are for the NASDAQ Global Market. The continued listing standards for the three market tiers are also provided in [Table 1](#), [Table 2](#) and [Table 3](#).

Beginning in October 2007, the NASDAQ Listing Qualifications department will review all NASDAQ-listed companies each year, and qualified companies will be placed on the NASDAQ Global Select Market the following January. Qualified NASDAQ Global Market companies will be automatically transferred to the NASDAQ Global Select Market, however, qualified NASDAQ Capital Market companies will have the option to move to the NASDAQ Global Select Market or remain on the NASDAQ Capital Market. Companies may also apply to upgrade at any point during the year and the new NASDAQ Global Market listings will be placed on the NASDAQ Global Select Market, if they qualify.

NASDAQ's Conversion to a National Securities Exchange

On January 13, 2006, the Securities and Exchange Commission (SEC) approved NASDAQ's amended application to register the NASDAQ Stock Market as a national securities exchange. NASDAQ will begin operating as an exchange once NASDAQ satisfies the conditions specified in the approval order. The approval order was subsequently modified on June 30, 2006, to permit NASDAQ to begin operating as an exchange in NASDAQ-listed securities separately from other exchange-listed securities, pending the completion of the necessary conditions set forth in the original approval order. On June 30, 2006, the SEC also approved NASDAQ's phased approach to exchange operation.

Subject to final SEC approval, NASDAQ plans to become operational as an exchange in NASDAQ-listed issues on August 1, 2006, and in other exchange-listed issues on or after September 1, 2006. Other than the change in registration type, the impact on NASDAQ's listed companies will be minimal. The current NASDAQ listing standards and fees will not change when NASDAQ becomes an exchange. The initial and continued listing processes and procedures will essentially remain unchanged.

Listed Companies: Change in SEC Registration

Securities of companies that are listed today on NASDAQ are generally registered under Section 12(g) of the Securities Exchange Act of 1934 (Exchange Act) or exempt from registration. However, when NASDAQ begins operations as an exchange, all securities listed on The NASDAQ Stock Market must instead become registered under Section 12(b) of the Exchange Act.

Ordinarily, this process would require that each company file a registration statement under the Exchange Act with the SEC. However, to facilitate this process for its companies, NASDAQ has adopted Rule 4130, which allows NASDAQ to file a single application for Section 12(b) registration on behalf of all of its companies. Consequently, no further action is required by NASDAQ-listed companies in connection with this transition.

NASDAQ will notify its listed companies once it begins operating as a national securities exchange. Thereafter, any filings a company makes pursuant to the Exchange Act should indicate that its NASDAQ-listed securities are registered under Section 12(b) of the Exchange Act. NASDAQ does not believe that this change in registration status will affect any of the disclosure requirements imposed on NASDAQ-listed companies by the Exchange Act.

Blue Sky Implications

Section 18 under the Securities Act of 1933 (the Securities Act) preempts the application of state securities laws, or blue sky laws, to "covered securities," as defined in Section 18(b) of the Securities Act. For its part, NASDAQ has stated that it believes that all securities listed on the NASDAQ Global Market, including those on the NASDAQ Global Select Market, will be "covered securities" as that term is defined in Section 18(b) of the Securities Act.

NASDAQ Exchange Rules

To make the transition as seamless as possible, NASDAQ has crafted its rules to be very similar to NASD's by minimizing changes to those rules. Accordingly, all of the NASDAQ membership, conduct, listing and disciplinary rules are substantially identical to the rules that were used when NASDAQ operated as part of the NASD. The approved NASDAQ rules are available at

<http://nasdaq.complinet.com/nasdaq/display/index.html>.

NASDAQ has stated that NASD Notices to Members relating to NASD rules that are similar to new NASDAQ rules should be viewed as indicative of NASDAQ's understanding with respect to the application of such rules. NASDAQ may, however, issue its own interpretations with respect to its rules in the future.

Delisting of Securities

Companies whose securities are registered under Section 12(b) of the Exchange Act are subject to a different deregistration process than companies whose securities are registered under Section 12(g) of the Exchange Act. Prior to NASDAQ becoming a national securities exchange, NASDAQ-listed companies had their securities registered under Section 12(g) and NASDAQ and its issuers were required to apply to the SEC in order to delist a security on Form 15. When NASDAQ becomes a national securities exchange, NASDAQ-listed securities will be registered under Section 12(b) and NASDAQ-listed issuers will be permitted to effect delisting by filing a Form 25 with the SEC. A security will be delisted ten days after the filing of the Form 25.

Beneficial Ownership Reports and Forms 144

After NASDAQ becomes operational as a national securities exchange, Section 16 filings, Schedule 13D and 13G filings and Form 144 filings related to NASDAQ-listed securities will need to be filed with NASDAQ. However, NASDAQ has requested, and expects to receive, relief from the SEC that will allow the electronic filing of these reports through the SEC's EDGAR system to satisfy the obligation to file these reports with NASDAQ. A copy of these reports not made using the SEC's EDGAR system should be sent to NASDAQ's Listing Qualifications department.

If you have questions on these or any other securities law related issues, please contact the Seyfarth Shaw attorney with whom you normally work or any attorney on our website at www.seyfarth.com.

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Table 1
NASDAQ Global Select Market—Listing Standards

<i>Initial Listing Standards</i>		
No. of Beneficial Shareholders	Standard 1	(1) 550 and (2) average monthly trading volume of 1.1 million shares per month over prior 12 months
	Standard 2	2,200
	Standard 3	450 and (a) issuer listing in connection with emergence from bankruptcy; or (b) issuer is affiliated with another NASDAQ Global Select Market company
Market Value of Publicly Held Shares	Standard 1	\$110 million
	Standard 2	\$100 million and stockholders' equity of \$110 million
	Standard 3	\$70 million and (a) issuer listing in connection with IPO; (b) issuer is affiliated with, or a spin-off from, another NASDAQ Global Select Market company; or (c) issuer is a closed end management investment company
Financial Requirements	Standard 1	(1) \$11 million aggregate pre-tax income over past three fiscal years; (2) positive pre-tax income in each of past three fiscal years; and (3) \$2.2 million pre-tax income in each of past two fiscal years
	Standard 2	(1) \$27.5 million aggregated cash flows over past three fiscal years; (2) positive cash flow in each of past three fiscal years; (3) \$550 million average market value over past 12 months; and (4) \$110 million total revenue in past fiscal year
	Standard 3	(1) \$850 million average market value over past 12 months; and (2) \$90 million total revenue in past fiscal year
Minimum Bid Price Per Share		\$5 (if not already included in NASDAQ Global Market)
No. of Publicly Held Shares		1,250,000
<i>Continued Listing Standards</i>		
	Standard 1	Standard 2
Financial Requirements	\$10 million stockholders' equity	\$50 million market value of listed securities; or \$50 million total assets and \$50 million total revenue
No. of Publicly Held Shares	750,000	1.1M
Market Value of Publicly Held Shares	\$5 million	\$15 million
Minimum Bid Price	\$1	\$1
Shareholders (Round Lot Holders)	400	400
Market Makers	2	4

Notes:

- "Publicly Held Shares" does not include shares held by any officer, director, or 10% shareholder.
- In calculating cash flow and pre-tax income, NASDAQ will rely on the company's most recent periodic report and/or registration statement filed with the SEC.
- Companies that do not have three years of publicly reported data may still qualify for The NASDAQ Global Select Market if they meet separate financial requirements.
- Closed end management investment companies are not subject to the financial requirements shown in the table.
- If the common stock of an issuer is included in The NASDAQ Global Select Market, any other security of that same issuer, such as preferred stock, that qualifies for listing on The NASDAQ Global Market will be included in The NASDAQ Global Select Market.
- Round lot holders are holders of 100 shares or more.

Table 2
NASDAQ Global Market Tier—Listing Standards

	Initial			Continued	
	Standard 1	Standard 2	Standard 3	Standard 1	Standard 2
Financial Requirements	\$15 million stockholders' equity and \$1 million pre-tax income	\$30 million stockholders' equity	\$75 million market value of listed securities or \$75 million total assets and \$75 million total revenue	\$10 million stockholders' equity	\$50 million market value of listed securities or \$50 million total assets and \$50 million total revenue
No. of Publicly Held Shares	1.1 million	1.1 million	1.1 million	750,000	1.1 million
Market Value of Publicly Held Shares	\$8 million	\$18 million	\$20 million	\$5 million	\$15 million
Minimum Bid Price	\$5	\$5	\$5	\$1	\$1
Shareholders (Round Lot Holders)	400	400	400	400	400
Market Makers	3	3	4	2	4
Operating History	N/A	2 years	N/A	N/A	N/A

Notes:

- “Publicly Held Shares” does not include shares held by any officer, director, or 10% shareholder.
- Round lot holders are holders of 100 shares or more.
- Pre-tax income requirements are for the latest fiscal year or two of the last three fiscal years.
- Seasoned companies (those companies already listed or quoted on another marketplace) that only qualify under Standard 3 of the initial listing standards must meet the market value and minimum bid price requirements for 90 consecutive trading days prior to applying for listing.

Table 3
NASDAQ Capital Market—Listing Standards

	Initial	Continued
Financial Requirements	\$5 million stockholders' equity; or \$50 million market value of listed securities or \$750,000 pre-tax income	\$2.5 million stockholders' equity or \$35 million market value of listed securities or \$500,000 pre-tax income
No. of Publicly Held Shares	1 million	500,000
Market Value of Publicly Held Shares	\$5 million	\$1 million
Minimum Bid Price	\$4	\$1
Shareholders (Round Lot Holders)	300	300
Market Makers	3	2
Operating History	1 year or \$50 million market value of listed securities	N/A

Notes:

- “Publicly Held Shares” does not include shares held by any officer, director, or 10% shareholder.
- Round lot holders are holders of 100 shares or more.
- Pre-tax income requirements are for the latest fiscal year or two of the last three fiscal years.
- Seasoned companies (those companies already listed or quoted on another marketplace) that only qualify under the \$50M market value financial requirement of the initial listing standards must meet the market value and minimum bid price requirements for 90 consecutive trading days prior to applying for listing.

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