

NASDAQ Amends Rules to Require 10-Minute Prior Notification of Material Information

On November 16, 2009, The NASDAQ Stock Market LLC (“Nasdaq”) changed its rules to require that Nasdaq-listed companies provide Nasdaq with at least ten minutes prior notification before releasing material information to the public.¹ Nasdaq also modified its rules regarding the use of company websites to satisfy public disclosure requirements to be consistent with SEC guidance. The proposed changes became operative on December 7, 2009.

The proposed changes modify Rule 5250(b)(1) of Nasdaq’s stock market rules² (the “10 Minute Requirement”) to state that (new language is underlined, proposed deletions are in brackets):

Except in unusual circumstances, a Nasdaq-listed Company shall make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors’ decisions. The Company shall, prior to the release of the information, provide notice of such disclosure to Nasdaq’s MarketWatch Department at least ten minutes prior to public announcement if the information involves any of the events set forth in IM-5250-1. As described in IM-52501, prior notice to the MarketWatch Department [should] must be made through the electronic disclosure submission system available at www.nasdaq.net, except in emergency situations.

The purpose of the 10 Minute Requirement is to allow Nasdaq’s MarketWatch Department adequate time to assess whether it is appropriate to implement a trading halt to allow full dissemination of the news by the public and to maintain an orderly trading market. This change is modeled after the similar rule of the New York Stock Exchange.³

In addition to changes conforming the rule to the above, the last sentence of the final paragraph of IM-5250-1 regarding the Use of Regulation FD Compliant Methods in the Disclosure of Material Information has been modified as follows (the “Website Change”):

“Companies are reminded that the posting of information on [its own] the company’s website [is] may not by itself be considered a sufficient method of public disclosure under Regulation FD and SEC guidance and releases thereunder, and as a result, under Nasdaq rules.”

The Website Change is designed to eliminate an inconsistency between Nasdaq’s rules and SEC guidance on Regulation FD compliance.

¹ Pursuant to 19b-4(f)(6) of the Securities Exchange Act of 1934 (17 C.F.R. 240.19b-4(f)(6)), the changes were automatically effective. See SEC Release No. 34-61008 (November 16, 2009), available at <http://www.sec.gov/rules/sro/nasdaq/2009/34-61008.pdf>.

² The electronic manual can be found at <http://nasdaq.cchwallstreet.com/>.

³ Section 202.06(B) of the NYSE Listed Company Manual, available at http://nysemanual.nyse.com/LCMTTools/bookmark.asp?id=sx-ruling-nyse-policymanual_202.00&manual=/lcm/sections/lcm-sections/.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Jon Mark at 212.701.3100 or jmark@cahill.com, John Schuster at 212.701.3323 or jschuster@cahill.com, or Gillian Gaeta at 212.701.3202 or ggaeta@cahill.com.

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80 Pine Street | NY, NY | 10005-1702 | Phone: 212.701.3000 | Fax: 212.269.5420 | Cahill.com

CAHILL GORDON & REINDEL LLP