

Alert

Nasdaq and NYSE Continued Listing Requirements – A Primer for Turbulent Times

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In recent weeks, many public companies have seen their stocks test new lows. As a result, familiarity with stock exchange continued listing requirements has taken on new importance. This Alert summarizes Nasdaq and the NYSE's minimum price and market value requirements for continued listing, as well as the relief currently provided by Nasdaq.

Nasdaq

Nasdaq-listed companies must satisfy both a minimum bid price and a market value test.

Bid Price Requirement

All companies listed on Nasdaq must maintain a minimum bid price of \$1.00 per share. If the consolidated closing bid price is less than \$1.00 for 30 consecutive business days, Nasdaq will notify the listed company of a bid price deficiency. Once notified, the company has 180 calendar days to cure the deficiency. In order to cure, the consolidated closing bid price must be \$1.00 or more for ten consecutive business days prior to the end of the cure period.

Market Value Requirement

The minimum market value requirement requires Nasdaq Global Select and Nasdaq Global Market companies to maintain a minimum market value of publicly held shares of either \$5 million or \$15 million, depending upon which alternate listing standard the company utilizes. Market value is calculated by multiplying the total shares outstanding less any shares held by officers, directors, employee stock ownership plans or beneficial owners of 10% or more of the shares, by the closing bid price.

If a listed company's market value is below the minimum threshold for 30 consecutive business days, it has 90 calendar days to cure the deficiency. The deficiency is cured if the company satisfies the minimum market value requirement for ten consecutive business days prior to the end of the cure period.

Interim Relief

On Oct. 16, 2008, Nasdaq suspended its minimum bid price and market value requirements through Jan. 16, 2009.

- Companies that were in compliance with both requirements prior to Oct. 16 will continue to be treated as fully compliant through Jan. 18, 2009, regardless of bid price and market value fluctuations during the interim period.
- For companies already within a 90- or 180-day grace period on Oct. 16, 2008, additional days will cease to be counted until Jan. 19, 2009.

- Companies that were the subject of a delisting hearing on Oct. 16, 2008, will have the hearing suspended until Jan. 19, 2009.

Nasdaq's interim relief does not affect a company's ability to cure a deficiency between Oct. 16, 2008, and Jan. 16, 2009.

NYSE

NYSE-listed companies also are required to satisfy minimum share price and market capitalization requirements.

Share Price Requirement

Like Nasdaq, the NYSE has a \$1.00 minimum share price requirement. A listed company will fail to satisfy this requirement if the average closing price of its common stock is less than \$1.00 over a period of 30 consecutive trading days. At the end of the 30-day period, the NYSE will notify the company and, if the company responds within 10 business days, it will be given six months to cure the deficiency. The company will regain compliance with the minimum share price requirement if its closing share price is at least \$1.00 on the last day of the six-month period and its average closing share price was at least \$1.00 over the preceding 30 trading days. If shareholder approval is required to take action to raise the bid price (i.e., a reverse stock split), the NYSE will grant an extension of the six-month period if the company is otherwise in compliance with the NYSE continued listing requirements.

Market Capitalization Requirement

The minimum market capitalization threshold varies depending on the standard relied on in connection with the company's initial listing. A company will cease to be in compliance with the NYSE's continued listing standards as follows:

- If the company listed under the Earnings standard, its 30 trading-day average global market capitalization is below \$75 million and its total stockholders' equity is less than \$75 million;
- If the company listed under the Pure Valuation with Cash Flow standard, its 30 trading-day average global market capitalization is less than \$250 million and its total revenues over the preceding 12 months are less than \$20 million, or its 30 trading-day average global market capitalization is less than \$75 million;
- If the company listed under the Pure Valuation standard, its 30 trading-day average global market capitalization is less than \$375 million and its total revenues over the preceding 12 months are less than \$15 million, or its 30 trading-day average global market capitalization is less than \$100 million; and
- If the company listed under the Affiliated Company standard, its parent or affiliate fails to meet its minimum market capitalization requirement, the listed company's 30 trading-day average global market capitalization is less than \$75 million and its total stockholders' equity is less than \$75 million.

In determining market capitalization, the NYSE generally will look to the total common stock outstanding (excluding treasury shares) and any common stock that would be issued upon conversion of another outstanding equity security. The NYSE deems these other securities to be reflected in market value to the extent that they are a "substantial equivalent" of common stock, which requires that the securities be publicly traded or quoted or convertible into a publicly traded or quoted security.

If a listed company fails to satisfy the applicable market capitalization test, it will receive a notice from the NYSE. Pursuant to the notice, the company must communicate its intent within ten days, and then furnish to the NYSE, within 45 days after receipt of the notice, a plan of action that will enable the company to comply with the NYSE's continued listing standards within 18 months after receipt of the notice. The NYSE has the discretion to accept or reject the plan. To the extent that the company's average global market capitalization drops below \$25 million for 30 consecutive trading days, the NYSE will commence delisting procedures immediately and the company will not be given the opportunity to develop and implement a corrective plan.

The foregoing criteria do not apply to real estate investment trusts, limited partnerships and closed end funds. The NYSE has separate continued listing criteria for these types of entities.

Disclosure Requirements

If Nasdaq or the NYSE notifies a listed company that it does not satisfy a continued listing standard of the exchange, the company is required to file a Form 8-K pursuant to Item 3.01 of that form. The Form 8-K must disclose the date that the company received the notice, the rule it has failed to satisfy and any action or response it has decided to take in response to the notice. A Form 8-K must be filed notwithstanding any grace period to cure the deficiency. The Form 8-K must be filed within four business days after the event.

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