



SECURITIES PRACTICE GROUP

NASDAQ LAUNCHES NEW MARKET TIER AND BECOMES NATIONAL SECURITIES EXCHANGE

In July, 2006 the Nasdaq Stock Market implemented changes that will affect all the Nasdaq-listed companies. On July 3, 2006, Nasdaq introduced a new market tier – the Global Select Market. In connection with the creation of the Global Select Market, the former Nasdaq National Market has become the Nasdaq Global Market, and the former Nasdaq SmallCap Market has become the Nasdaq Capital Market. Also in July, the SEC approved Nasdaq’s application to convert from an interdealer quotation system to a national securities exchange, and as a result, the securities of all Nasdaq-listed companies became registered under Section 12(b) of the Securities Exchange Act of 1934.

Corporate Governance and Listing Requirements

The new Global Select Market has the highest listing standards of Nasdaq’s three market tiers, as measured by market value, liquidity and earnings. Nasdaq aims to provide Global Select Market companies and their directors with enhanced support in their management, communication and visibility.

Nasdaq will continue to apply its existing corporate governance rules to all three market tiers. The initial and continued listing qualifications for the Global Select Market are provided in Tables 1(a) and 1(b), respectively. The initial and continued listing requirements for the Global and Capital Markets are provided in Tables 2 and 3, respectively. Note that the initial and continued listing requirements for the Global Market are the same as those for the former National Market, and the initial and continued listing requirements for the Capital Market are the same as those for the former SmallCap Market.

Beginning in October 2007, Nasdaq’s Listing Qualifications department will review all Nasdaq-listed companies and automatically transfer qualified Global Market companies to the Global Select Market the following January. Qualified Capital Market companies will have the option to request transfer to the Global Select Market. Companies may also apply for upgrades at any time throughout the year.

Conversion to National Securities Exchange

As noted above, Nasdaq has converted from an interdealer quotation system to a national securities exchange. Nasdaq began operating as a national securities exchange in Nasdaq-listed issues on August 1, 2006 and expects to begin operating as a national securities exchange in other exchange-listed issues on or after September 1, 2006.

Section 12(b) of the Exchange Act requires companies whose securities are traded on a national securities exchange to register those securities under the Exchange Act. Before Nasdaq’s conversion, Nasdaq-listed companies were registered under Section 12(g) of the Exchange Act, or were exempt from registration, as the securities were not considered to have been traded on a national exchange. On July 31, 2006, Nasdaq filed, and the SEC approved and declared effective, a single application for Section 12(b) registration on behalf of all Nasdaq-listed companies. Nasdaq-listed companies are not required to take any action in connection with the Exchange Act registration process, but they must begin to indicate in their Exchange Act filings that their securities are registered under Section 12(b) of the Exchange Act (for example, this should be noted on

the cover page of a Form 10-K). Nasdaq's application for section 12(b) registration on behalf of its listed companies and the SEC's order approving the application are available on the SEC's website at www.sec.gov/rules/other/2006/34-54240.pdf.

Nasdaq-listed companies should also note that while the Commission file numbers for exchange-listed companies begin with a different prefix (001-XXXXX) than those of Nasdaq-listed companies (000-XXXXX), the SEC has decided to leave the numbers of Nasdaq-listed companies unchanged due to the large number of affected companies.

Nasdaq Exchange Rules

Before Nasdaq began operating as a national exchange, its listed companies were required to comply with the membership, conduct, listing, disciplinary and other rules of the National Association of Securities Dealers (NASD). Now, Nasdaq-listed companies are required

to comply with Nasdaq's own version of these rules. To ensure that this transition is as smooth as possible, Nasdaq has adopted rules that are virtually identical to NASD's rules. The approved rules are available at <http://nasdaq.complinet.com/nasdaq/display/index.html>.

Beneficial Ownership Reports and Forms 144

All Section 16 filings (Forms 3, 4 and 5), Schedules 13D and 13G and Forms 144 relating to Nasdaq-listed securities should be filed with Nasdaq. Nasdaq has requested that the SEC allow the electronic filing of the Section 16 reports and Schedules 13D and 13G via the SEC's EDGAR system to satisfy this obligation, and Nasdaq expects that the SEC will grant its request. Because Rule 144 reports are not required to be electronically filed on the EDGAR system, copies of these reports should be sent to Nasdaq's Listing Qualifications department.

If you have any questions on these or any other securities law related issues, please contact David Braswell, Jill Newbold or your regular Armstrong Teasdale attorney.

DAVID BRASWELL
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102
314.552.6631
dbraswell@armstrongteasdale.com

JILL NEWBOLD
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102
314.259.4720
jnewbold@armstrongteasdale.com

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"ADVERTISING MATERIAL: COMMERCIAL SOLICITATIONS ARE PERMITTED BY THE MISSOURI RULES OF PROFESSIONAL CONDUCT BUT ARE NEITHER SUBMITTED TO NOR APPROVED BY THE MISSOURI BAR OR THE SUPREME COURT OF MISSOURI."

St. Louis, MO
One Metropolitan Square
St. Louis, Missouri 63102
(314) 621-5070

Jefferson City, MO
3405 West Truman
Boulevard
Jefferson City, Missouri
65109
(573) 636-8394

Kansas City, MO
2345 Grand Boulevard
Kansas City, Missouri 64108
(816) 221-3420

Overland Park, KS
13220 Metcalf
Overland Park, Kansas 66213
(913) 814-0969

Belleville, IL
23 South First Street
Belleville, Illinois 62220
(618) 397-4411

Edwardsville, IL
241 North Main Street
Edwardsville, Illinois 62025
(618) 655-4004

Las Vegas, NV
701 North Green Valley Parkway
Henderson, Nevada 89074
(702) 678-5070

Washington, DC
1747 Pennsylvania Avenue,
N.W.
Washington, D.C. 20006
(202) 454-2800

Shanghai, China
1376 Nan Jing Xi Lu
Shanghai Centre - Suite 718
Shanghai 200040
P.R. China
011-8621-6279-8808

Table 1(a): NASDAQ Global Select Market Initial Listing Qualifications¹

Requirements	Standard 1	Standard 2	Standard 3	Marketplace Rules
Pre-tax earnings ² (income from continuing operations before income taxes)	Aggregate in prior three fiscal years ≥ \$11 million and Each of the two most recent fiscal years ≥ \$2.2 million and Each of the prior three fiscal years ≥ \$0	N/A	N/A	4426(c)(1)
Cash Flows ³	N/A	Aggregate in prior three fiscal years ≥ \$27.5 million and Each of the prior three fiscal years ≥ \$0	N/A	4426(c)(2)
Market capitalization ⁴	N/A	Average ≥ \$550 million over prior 12 months	Average ≥ \$850 million over prior 12 months	4426(c)(2)(C) 4426(c)(3)(A)
Revenue	N/A	Previous fiscal year ≥ \$110 million	Previous fiscal year ≥ \$90 million	4426(c)(2)(C) 4426(c)(3)(B)
Bid price ⁵	\$5.00	\$5.00	\$5.00	4426(d)
Market makers ⁶	3	3	4	4310(c)(1)
Corporate governance	Yes	Yes	Yes	4350, 4351 & 4460

¹ These requirements apply to all companies, other than closed-end management investment companies. A closed end management investment company is not required to meet the financial requirements of Marketplace Rule 4426(c).

If the common stock of an issuer is included in the NASDAQ Global Select Market, any other security of that same issuer, such as other classes of common or preferred stock, that qualifies for listing on The NASDAQ Global Market shall also be included in The NASDAQ Global Select Market.

² In calculating income from continuing operations before income taxes for purposes of Rule 4426(c)(1), NASDAQ will rely on an issuer's annual financial information as filed with the Securities & Exchange Commission (SEC) in the issuer's most recent periodic report and/or registration statement. If an issuer does not have three years of publicly reported financial data, it may qualify under Rule 4426(c)(1) if it has: (i) reported aggregate income from continuing operations before income taxes of at least \$11 million and (ii) positive income from continuing operations before income taxes in each of the reported fiscal years. A period of less than three months shall not be considered a fiscal year, even if reported as a stub period in the issuer's publicly reported financial statements.

³ In calculating cash flows for purposes of Rule 4426(c)(2), NASDAQ will rely on the net cash provided by operating activities reported in the statements of cash flows, as filed with the SEC in the issuer's most recent periodic report and/or registration statement, excluding changes in working capital or in operating assets and liabilities.

If an issuer does not have three years of publicly reported financial data, it may qualify under Rule 4426(c)(2) if it has: (i) reported aggregate cash flows of at least \$27.5 million and (ii) positive cash flows in each of the reported fiscal years. A period of less than three months shall not be considered a fiscal year, even if reported as a stub period in the issuer's publicly reported financial statements.

⁴ In the case of an issuer listing in connection with its initial public offering, compliance with the market capitalization requirements of Rules 4426(c)(2) and (c)(3) will be based on the company's market capitalization at the time of listing.

⁵ The bid price requirement is not applicable to a company listed on The NASDAQ Global Market that transfers its listing to The NASDAQ Global Select Market.

⁶ An electronic communications network (ECN) is not considered a market maker for the purpose of these rules.

Table 1(b): NASDAQ Global Select Market Continued Listing Qualifications

Requirements	Standard 1 Marketplace Rule 4450(a)	Standard 2 Marketplace Rule 4450(b)
Stockholders' equity	\$10 million	N/A
Market value of listed securities or Total assets and total revenue	N/A	\$50 million or \$50 million and \$50 million
Publicly held shares ¹	750,000	1.1 million
Market value of publicly heldshares	\$5 million	\$15 million
Bid price	\$1	\$1
Shareholders (round lot holders) ²	400	400
Market makers ³	2	4
Corporate governance ⁴	Yes	Yes

¹ Publicly held shares is defined as total shares outstanding, less any shares held by officers, directors or beneficial owners of 10% or more.

² Round lot holders are shareholders of 100 shares or more.

³ An electronic communications network (ECN) is not considered a market maker for the purpose of these rules.

⁴ Marketplace Rules 4350, 4351 and 4360.

Table 2: NASDAQ Global Market Financial Requirements

Requirements	Requirements			Continued Listing	
	Standard 1 Marketplace Rule 4420(a)	Standard 2 Marketplace Rule 4420(b)	Standard 3 Marketplace Rule 4420(c)	Standard 1 Marketplace Rule 4450(a)	Standard 2 Marketplace Rule 4450(b)
Stockholders' equity	\$15 million	\$30 million	N/A	\$10 million	N/A
Market value of listed securities or Total assets and Total revenue	N/A	N/A	\$75 million ^{1,2} or \$75 million and \$75 million	N/A	\$50 million ¹ or \$50 million and \$50 million
Income from continuing operations before income taxes (in latest fiscal year or in 2 of last 3 fiscal years)	\$1 million	N/A	N/A	N/A	N/A
Publicly held shares ³	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
Bid price	\$5	\$5	\$5 ²	\$1	\$1
Shareholders (round lot holders) ⁴	400	400	400	400	400
Market makers ⁵	3	3	4	2	4
Operating history	N/A	2 years	N/A	N/A	N/A
Corporate governance ⁶	Yes	Yes	Yes	Yes	Yes

¹ For initial and continued listing under Standard 3, a company must satisfy one of the following: the market value of listed securities requirement or the total assets and the total revenue requirement. Under Marketplace Rule 4200(a)(20), listed securities is defined as "securities quoted on NASDAQ or listed on a national securities exchange".

² Seasoned companies (those companies already listed or quoted on another marketplace) qualifying only under the market value of listed securities requirement of Standard 3 must meet the market value of listed securities and the bid price requirements for 90 consecutive trading days prior to applying for listing.

³ Publicly held shares is defined as total shares outstanding, less any shares held by officers, directors or beneficial owners of 10% or more.

⁴ Round lot holders are shareholders of 100 shares or more.

⁵ An electronic communications network (ECN) is not considered a market maker for the purpose of these rules.

⁶ Marketplace Rules 4350, 4351 and 4360.

Table 3: NASDAQ Capital Market Financial Requirements

Requirements	Initial Listing	Continued Listing	Marketplace Rules*
Stockholders' equity ¹ or Market value of listed securities ² or Net income from continuing operations (in the latest fiscal year or in 2 of the last 3 fiscal years)	\$5 million or \$50 million or \$750,000	\$2.5 million or \$35 million or \$500,000	Rule 4310(c)(2) Rule 4320(e)(2)
Publicly held shares ³	1 million	500,000	Rule 4310(c)(7) Rule 4320(e)(5)
Market value of publicly held shares ^{3, 6}	\$5 million	\$1 million	Rule 4310(c)(7) Rule 4320(e)(5)
Bid Price ²	\$4	\$1	Rule 4310(c)(4) Rule 4320(e)(2)
Shareholders (round lot holders) ⁴	300	300	Rule 4310(c)(6) Rule 4320(e)(4)
Market makers ⁵	3	2	Rule 4310(c)(1) Rule 4320(e)(1)
Operating history or Market value of listed securities ^{2, 6}	1 year or \$50 million	N/A	Rule 4310(c)(3) N/A
Corporate governance	Yes	Yes	Rules 4350, 4351 & 4360

¹ A company must satisfy one of the following to be in compliance: the stockholders' equity requirement, the market value of listed securities requirement or the net income requirement. Under Marketplace Rule 4200(a)(20), listed securities is defined as "securities quoted on NASDAQ or listed on a national securities exchange".

² Seasoned companies (those companies already listed or quoted on another marketplace) qualifying only under the market value of listed securities requirement must meet the market value of listed securities and the bid price requirements for 90 consecutive trading days prior to applying for listing.

³ Publicly held shares is defined as total shares outstanding, less any shares held by officers, directors or beneficial owners of 10% or more. In the case of ADRs, for initial inclusion only, at least 100,000 shall be issued.

⁴ Round lot holders are shareholders of 100 shares or more.

⁵ An electronic communications network (ECN) is not considered a market maker for the purpose of these rules.

⁶ The operating history/market value of listed securities requirement is not applicable to non-Canadian foreign securities.