

SECURITIES PRACTICE GROUP

## NASDAQ RULE CHANGE

On August 8, 2006, the Securities and Exchange Commission approved a rule change proposed by the NASDAQ Stock Market, LLC that will soon have an effect on all companies listing their securities on NASDAQ.

### THE NEW RULE

The new rule requires companies with securities listed on NASDAQ to be eligible for the Direct Registration System (“DRS”). The DRS allows an investor to establish a book-entry position on the books of the listed company and to electronically transfer that position. The system allows an investor to have securities registered in the investor’s name without having a securities certificate issued and it also allows an investor to electronically transfer those securities to a broker-dealer in order to effect a transaction without the risk and delays normally associated with the use of physical securities certificates.

### EFFECTIVENESS

The rule change is immediately applicable to those companies listing on NASDAQ for the first time after January 1, 2007.

For those companies with securities listed on NASDAQ prior to January 1, 2007, the rule change will become effective as of January 1, 2008.

### WHAT IT MEANS FOR THE INVESTOR

Because physical securities certificates require manual processing, their use can result in significant delays and expenses in processing securities transactions and present the risk of certificates being lost, stolen or forged. Many of these costs or risks are ultimately borne by investors. This rule change is designed to lessen the inefficiencies and risks associated with certificated securities. All rights associated with securities certificates will be retained by investors without the responsibility of holding an actual certificate.

### WHAT IT MEANS FOR THE ISSUER

While the rule change requires that securities of companies listed on NASDAQ be eligible for DRS, it does not mandate the elimination of physical certificates. Subject to applicable state law and a listed company’s governing documents, an investor could still elect to receive a physical certificate if the issuer chooses to make them available.

The only entity that currently facilitates electronic transfers between transfer agents and broker-dealers is The Depository Trust Company (“DTC”). As a result, in order for a security to be eligible to participate in DRS, an issuer will be

required to use a transfer agent that meets DTC's DRS transfer agent requirements. An issuer may also need to amend its governing documents to allow for uncertificated securities, which, for some issuers, could require shareholder approval.

## SUGGESTIONS

In order to insure compliance with the new NASDAQ registration rule, any company with securities listed on NASDAQ should:

- Perform a thorough review of its charter and bylaws to see what changes, if any, are necessary to allow for issuance of book-entry shares (uncertificated shares) and determine whether the corporate law of the issuer's state of incorporation or organization permits the same.
- If the charter or bylaws require an amendment to comply with the new rule, and shareholder action is required to amend the charter or bylaws, the company should prepare for this vote in its next upcoming shareholder meeting to avoid having to call a special meeting of the shareholders later in 2007.

If you have any questions about this new NASDAQ rule, your company's compliance with it, or any other securities related issues, please contact your regular Armstrong Teasdale contact or any of the following:

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