WILLKIE FARR & GALLAGHER LLP

CLIENT
MEMORANDUM

NASDAQ MODIFIES DELISTING RULES FOR DELINQUENT PERIODIC REPORT FILERS

On October 30, 2008, The NASDAQ Stock Market LLC ("NASDAQ") amended its rules regarding treatment of listed companies that are delinquent in making periodic report filings to the Securities and Exchange Commission (the "Commission") or other regulatory authorities. The rule changes grant late filers an extension in time to regain compliance before delisting.[1] Prior to the rule change, companies received a delisting letter from the NASDAQ staff immediately upon missing a filing due date, pursuant to NASDAQ Rules 4310(c)(14) and 4320(e)(12). Such late filers were not given a compliance period in which to make a late filing, nor was the NASDAQ staff permitted to grant the delinquent companies additional time to comply with the filing requirements.

Under the modified rules, late filers will now receive 60 calendar days from receipt of a notice of delinquency from the NASDAQ staff to submit a plan to regain compliance. The plan of compliance should address the reasons for the late filing, the likelihood of making the filing within the exception period, the company's past compliance history, corporate events that may occur within the exception period and disclosures to the market. Upon review of this plan and other relevant information, the staff may grant the company up to 180 calendar days from the due date of its first late periodic report to fulfill the filing requirement and regain compliance. Companies will still be required to publicly disclose their delinquent status upon receiving notification from the staff and will be included on a list of deficient and delinquent companies on NASDAQ's website.

If a company does not regain compliance in the additional time granted by the staff, or the staff determines not to allow such additional time to achieve compliance, the company will receive a delisting notification from the NASDAQ staff and, to avoid delisting, may request a hearing before the Listing Qualifications Panel (the "Panel") within seven calendar days of the date of the Staff Determination. Before the rule change, a request for a hearing would stay the delisting action pending a decision by the Panel. The new rule, however, limits the stay of the delisting action to 15 calendar days from the deadline to request a hearing, unless the company specifically requests, and is granted, a further stay by the Panel. If granted a further stay by the Panel, a company may avoid delisting for up to 180 days from the date of the staff's delisting determination, but in no case may a company avoid delisting for more than 360 days from the due date of the first late periodic report.

NASDAQ proposed the above rule changes for late filers due to recent changes in the regulatory environment. These changes include heightened scrutiny by independent auditors and a growing

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[1] The changes discussed herein affect NASDAQ Rules 4802(b), 4803(a)-(b), 4805(b) and 4809(a)-(c).

complexity in technical accounting standards, which, though necessary for improved financial disclosures, hinder companies in making prompt financial filings. Further, NASDAQ stated its concern that the disruption caused by a delisting, particularly when a company made a good faith effort to comply with the periodic report filing requirements, was on balance not in the best interests of the company, its shareholders or prospective investors.

NASDAQ's modified rules regarding late filers are based on and similar to an existing New York Stock Exchange (the "NYSE") rule that provides delinquent companies with additional time to comply with filing requirements. Section 802.01E of the NYSE Listed Company Guide automatically grants a NYSE-listed company that is late in filing its annual report six months to regain compliance, with another six-month period available at the discretion of the NYSE staff. The only significant difference between Section 802.01E and the NASDAQ rules is that the NYSE rule does not provide a cure period to regain compliance for late quarterly filings.

The NASDAQ rules qualify for immediate effectiveness under Rule 19b-4(f)(6) of the Securities Exchange Act of 1934.[2] All companies that fail to meet their periodic report filing deadlines and have not received a delisting notification from the NASDAQ staff as of October 30, 2008, will be able to take advantage of the new rules. Companies that have already received notice of delisting, however, will continue to be subject to the pre-existing review process.

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If you have any questions regarding this memorandum, please contact Jeffrey R. Poss (212-728-8536, jposs@willkie.com), Adam M. Turteltaub (212-728-8129, aturteltaub@willkie.com), or the attorney with whom you regularly work.

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[2] The Commission stated in a recent release that proposed rules of Self-Regulatory Organizations ("SROs") based on already approved rules of other SROs are eligible for immediate effectiveness under Rule 19b-4(f)(6). Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008).