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Door to NASDAQ's New Alternative Listing Options Opens Slowly for Reverse Merger Companies

by Fang Liu

On April 18, 2012, the SEC approved a Nasdaq proposal for an alternative to the current $4 per share initial listing bid price requirement on the Nasdaq Capital Market. The alternative will require a closing price of either $2 or $3 per share, if certain other listing requirements are met. However, Nasdaq unofficially confirmed that the newly approved alternative does not apply to reverse merger companies until after they have filed four annual reports on Form 10-K , starting from the first full year after the reverse merger transaction.

Existing Listing Requirements

Nasdaq's stated purpose for the proposal is to compete with NYSE Amex for initial listings of companies with securities priced between $2 and $4. Under the existing rules, issuers seeking to list their securities on the Nasdaq Capital Market must meet the following minimum quantitative and qualitative initial listing standards:

Equity Standard:

- $5 million in stockholders' equity
- $15 million in market value of publicly held stock
- Operating history of 2 years
- 1 million publicly held shares
- 300 round lot shareholders
- Bid price of $4 per share

- 3 market makers
- Corporate governance compliance

Market Value Standard:

- $4 million in stockholders' equity
- $15 million in market value of publicly held stock
- $50 million in market value of listed securities
- 1 million publicly held shares
- 300 round lot shareholders
- Bid price of $4 per share
- 3 market makers
- Corporate governance compliance

Net Income Standard:

- $4 million in stockholders' equity
- Net income from continuing operations of $750,000
- 1 million publicly held shares
- 300 round lot shareholders
- Bid price of $4 per share
- 3 market makers
- Corporate governance compliance

Alternative Price Requirements

Under the newly approved alternative requirements, issuers that do not meet the $4 per share minimum bid price requirement may still list their securities on the Nasdaq Capital Market if it meets all other initial listing requirements and the following requirements:

- For at least five consecutive business days prior to Nasdaq approval, the security has a minimum closing price of $3 per share if the issuer meets the Equity or Net Income Standard.
- For at least five consecutive business days prior to Nasdaq approval, the security has a minimum closing price of $2 per share if the issuer meets the Market Value Standard.
- If the issuer has been in continuous operation for at least three years, the issuer must demonstrate that it has net tangible assets in excess of $2 million.
- If the issuer has been in continuous operation for less than three years, the issuer must demonstrate net tangible assets in excess of $5 million.

The issuer could also be listed if it does not meet the net tangible assets tests above but has average revenue of at least $6 million for the last three years.

Nasdaq Rule 5505(a)(1)(B) would be revised to incorporate the net tangible assets and average revenue tests contained in the alternative penny stock exclusion set forth in Rule 3a51-1(g) under the Act, so that the issuers listed under the new requirements with closing price between $2 and $4 on the Nasdaq Capital Market are not considered "penny stocks." Nasdaq Rule 5505(a)(1)(B) would be revised to delete specific reference to the $4 minimum bid price requirement.

Implications for Reverse Merger Companies

Nasdaq has more stringent listing requirements for reverse merger companies, which are:

- Nasdaq's current rules only require an issuer to achieve a $4 bid price on a single day to qualify for initial listing. Nasdaq requires reverse merger companies to maintain a closing price of $4 per share or higher for at least 30 of the most recent 60 trading days.
- Nasdaq's application analysts unofficially confirmed that the newly approved alternative does not apply to reverse merger companies until after they have filed four annual reports on Form 10-K , starting from the first full year after the reverse merger transaction. For example, if a company completed a reverse merger in 2010, the annual report for 2011 will be considered the first 10-K for the purpose of the alternative listing requirements.

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