

Nasdaq Amends Minimum Bid Price Rule to Prevent Companies from Resetting the Compliance Period for Subsequent Listing Failures

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On October 7, 2024, the Securities and Exchange Commission (the SEC) approved an amendment (the Amendment) to the rules governing The Nasdaq Stock Market (Nasdaq) minimum bid price requirement. The changes resulting from the Amendment, which amended Listing Rule 5810(c)(3)(A) and are described below, were effective immediately.

Background

Often, troubled companies will take action, such as effecting a reverse stock split, when faced with the possibility of being delisted from a national securities exchange for failure to meet the minimum bid price requirement of that exchange. That tactic is a double-edged sword. While it allows the company to shore up its stock price, it will often cause the company to fall below another of the exchange's numeric minimum thresholds (for example, the requirement to maintain a minimum number of publicly held shares or shareholders). Recently, Nasdaq determined that curing one such listing failure with another failure causes undue investor confusion and negatively impacts confidence in the markets.

Thus, on July 9, 2024, Nasdaq proposed the Amendment to close a loophole that had previously allowed companies to remain listed on all tiers of Nasdaq for both the compliance period granted for those companies' initial listing failure (*e.g.*, the failure to maintain the minimum required bid price) and then, consecutively, for the compliance period granted for the company's secondary listing failure, when that secondary listing failure was the direct result of corporate action taken to correct Nasdaq first listing failure (*e.g.*, a reverse stock split that results in failure to maintain the minimum number of publicly held shares).

The Prior Rule and the Amended Rule

Pursuant to Nasdaq Listing Rule 5450(a)(1) for Nasdaq Global Market and Nasdaq Global Select Market companies and Nasdaq Listing Rule 5550(a)(2) for Nasdaq Capital Market companies, listed companies must generally maintain a minimum bid price of \$1.00; failure to do so for a period of 30 consecutive business days results in a deficiency. Listing Rule 5810 requires that companies deemed deficient shall be promptly notified of the deficiency and be granted a period of 180 calendar days from that notice to achieve compliance with that rule. Companies are deemed to have achieved

compliance if they were able to raise their bid price to \$1.00 or above for a minimum of 10 consecutive business days.

But the Nasdaq rules also separately provide that companies deemed deficient for failure to maintain the appropriate number of publicly held shares, or the number of shareholders, may be granted up to a separate 180 calendar day period to regain compliance with those deficiencies.

Thus, historically, some companies chose to take corporate action (*e.g.*, a reverse stock split) to achieve compliance with the minimum bid price requirement, at the cost of compliance with other listing requirements, so as to be granted a second compliance or grace period before being delisted from the exchange. Such maneuvers confused investors and gave companies the appearance of unearned financial well-being.

Now, pursuant to the Amendment, a company in such position will not be granted a second grace or compliance period and will not be deemed in compliance with the requirements of *either* deficiency until they have cured both deficiencies.

What This Means for Kelley Drye Clients Listed on Nasdaq

The bottom line is that Nasdaq will no longer allow listed companies to cure the minimum price deficiency at the detriment of another listing requirement by allowing the listed company to avoid delisting for an extended period of time while seeking to cure the second deficiency. Companies currently struggling to maintain their minimum bid price will need to be careful to protect and maintain all listing standard requirements when seeking to cure one deficiency.

Attorneys in Kelley Drye's Corporate Practice Group are available to assist in navigating and preparing for compliance with these new rules. For more information, please contact your current Kelley Drye attorney or any member of the [Corporate Practice Group](#).