SEC and Nasdaq Respond to Recent Market Disruption

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The SEC and Nasdaq have taken various steps to address the market disruption arising from the terrorist attacks of September 11.

Nasdaq Suspends Minimum Bid and Market Float Requirements through January 2, 2002

On September 27, 2001, Nasdaq suspended its minimum bid and market value of public float requirements for continued listing until January 2, 2002. Nasdaq adopted this measure to help companies remain listed in view of the extraordinary market conditions following the tragedy of September 11. According to a Reuters news report, 669 companies, or approximately 15% of all Nasdaq companies, are trading below $1.00 per share and potentially subject to delisting for failure to meet the minimum bid price requirement.

Effective immediately, Nasdaq will halt the delisting process for failure to meet the minimum bid price and public float requirements. During this moratorium, Nasdaq will not delist any company for failure to meet these requirements.

Normally, Nasdaq rules provide that companies whose securities fall below the minimum bid price or fail to meet minimum market value of public float requirements for 30 consecutive trading days are given a 90-day grace period to regain compliance. A company may demonstrate compliance by meeting the applicable standard for a minimum of 10 consecutive trading days. If a company fails to regain compliance within the applicable time frame, that company is subject to delisting. Nasdaq's new moratorium will suspend these requirements until January 2, 2002. Click here for a more detailed discussion of Nasdaq’s listing requirements, the delisting process and the implications of delisting.

SEC Issues Emergency Orders on Stock Repurchases and Insider Transactions

On September 14, the SEC issued an emergency order designed to make it easier for companies to repurchase their own securities. In the wake of past market disruptions, such as the crash of 1987, repurchases by companies have been credited with enhancing liquidity and strengthening financial markets. The order also provides some relief from the "short-swing profit" provisions of Section 16(b) by providing that any insider purchases during the period September 17-28 will not be matched with sales in the six months preceding September 17.

This emergency order was originally effective through September 21 and was extended through September 28. The SEC has announced it is seeking Congressional authority to extend its emergency rulemaking authority from 10 to 30 days, presumably because it plans to extend the order further. Any further extension of the order will be reported on our web site.

On September 20, the SEC issued two additional interpretations of interest to company insiders. The first states that since the markets were only open for one day during the week of September 10 that week should be excluded from calculations of the volume limitations of Rule 144. The second states that termination of a Rule 10b5-1 trading plan during the period September 11-28 does not, by itself, call into question whether the trading plan was "entered into in good faith and not as part of a plan or scheme to evade" the insider trading rules within the meaning of Rule 10b5-1(c).

Click

here to read a more detailed discussion of the emergency order and the above interpretations, and click here for a discussion of prearranged trading plans and the Rule 10b5-1 safe harbor from insider trading liability.

SEC to Revisit Regulation FD

Since the markets reopened on September 17, the SEC's Chairman, Harvey Pitt, has stated that the SEC is studying whether Regulation FD has contributed to increased trading volatility and should be modified. Click

here for a summary of Regulation FD and practical guidance for living with Regulation FD.

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