Published on *The National Law Review* https://natlawreview.com

SEC Approves Nasdaq Proposed Rules Modifying Minimum Bid Price Compliance Periods and Delisting Process

Article By:

Ralph V. De Martino

Cavas S. Pavri

Johnathan C. Duncan

Marc E. Rivera

Cody C. Boender

Jeffrey J. Kennedy

On January 17, the US Securities and Exchange Commission (SEC) approved Nasdaq's proposed rule changes addressing companies that fail to meet the minimum bid price requirements of $1 per share and the subsequent delisting process.

The Previous Framework

The rule changes revise Nasdaq Rules 5810 and 5815, which require that a company with equity listed on Nasdaq maintain a minimum bid price of at least $1 per share. Pursuant to Nasdaq Rule 5810(c)(3)(A), a company that fails to meet the minimum bid price requirement is granted an automatic compliance period of 180 calendar days from the date Nasdaq notifies the company of the deficiency to achieve compliance. Certain circumstances may grant a company a second 180-day compliance period. If a company is not eligible for the second compliance period, or the company fails to cure the bid price deficiency during the second compliance period, the company is issued a Delisting Determination which suspends a company's ability to trade on Nasdaq. This determination may be appealed to a Nasdaq Listing Qualifications Hearings Panel. Under the previous framework, a request for a hearing ordinarily would have stayed the Delisting Determination, pending the issuance of a written Hearings Panel decision. Additionally, the Panel may grant a company an additional 180 days from the date of the Delisting Determination to regain compliance. This effectively allowed a company to continue trading on Nasdaq for over 360 days (but not more than 540) while remaining noncompliant with the minimum bid price requirement.

Nasdaq proposed, and the SEC approved, the following amendments to Rules 5810 and 5815.

Suspension After Second Compliance Period (360 Days)

The SEC approved an amendment to Rule 5815 to provide that a request for a hearing will no longer stay a delisting action where a company that was afforded the second 180-day compliance period failed to comply with the minimum bid requirement during that period. Instead, companies will be suspended from trading on Nasdaq and its securities will trade on the over-the-counter market while awaiting a determination from the Hearings Panel. Rule 5815 still permits the Hearings Panel discretion, where it deems appropriate, to provide an exception to the suspension for up to 180 days from the Delisting Determination date for the company to regain compliance with the bid price requirement. The new rules clarify that a company achieves compliance with the bid price requirement by meeting the applicable standard for a minimum of 10 consecutive business days.

Delisting Determination If Failure to Meet Bid Price Requirement Occurs Within One Year After Reverse Stock Split

The SEC also approved an amendment of Nasdaq Rule 5810, which provides that if a company's security fails to meet the bid price requirement and the company has effected a reverse stock split within the prior one-year period, or one or more reverse stock splits over the prior two-year period with a cumulative ratio of 250 shares or more to one, the company is not eligible for any compliance period and will be immediately issued a delisting determination. The change applies to a company even if the company complied with the bid price requirement at the time of its prior reverse stock split. The rule change was motivated by Nasdaq's observation of companies, particularly those in financial distress, engaging in a pattern of repeated reverse stock splits to regain compliance with the bid price requirement. To protect investors, Nasdaq decided that such companies should face immediate delisting. It should be noted that a company in such circumstance would still be permitted to appeal the delisting determination to the Nasdaq hearings panel, where it could potentially receive up to 180 days to regain compliance.

Commission Findings

In connection with approving the new rules, the SEC determined that the proposed changes align with the Exchange Act's requirements, which aim to prevent fraudulent and manipulative acts and protect investors and the public interest. The SEC expressed concerns that low-priced securities might lack sufficient public float, investor base, and trading interest, making them vulnerable to manipulation.

Takeaways

These approved rule changes are now effective and underscore the SEC's focus on maintaining robust market standards and protecting investors from potential risks associated with low-priced securities. Companies listed on Nasdaq should carefully assess their compliance with the new requirements to avoid expedited delisting proceedings, including reviewing their current strategies.

Catrina Livermore contributed to this article

Listen to this post

National Law Review, Volume XV, Number 56