

# ClientAlert

March 5, 2009

## **NYSE Temporarily Suspends Minimum \$1.00 Closing Price and Extends Lower Market Capitalization Requirements**

On February 26, 2009, the New York Stock Exchange filed a rule change with the SEC to suspend temporarily the NYSE's continued listing requirement relating to the minimum \$1.00 average closing share price through June 30, 2009. The NYSE's filing also extends until the same date the temporary lowering of NYSE's market capitalization requirement that was announced on January 22, 2009. The rule changes are effective immediately.

### **Suspension of Closing Price Requirement**

Section 802.01C of the NYSE Listed Company Manual requires that the average closing price of a company's listed securities as reported on the consolidated tape be at least \$1.00 over any consecutive 30 trading-day period. A company whose share price has fallen below this amount for any such period is granted a six-month grace period to bring its share price and average share price back above \$1.00. A company that is unable to do so is subject to NYSE's suspension and delisting procedures. The cure procedures described in Sections 802.02 and 802.03 are not available to companies that fall below this standard.

The NYSE has suspended its continued listing requirement relating to the minimum \$1.00 average closing share price through June 30, 2009. During the suspension period, the NYSE will not cite companies for noncompliance with the closing price requirement and time will be tolled for companies that are currently in a grace period for a violation of this requirement. In addition, a company that was in a grace period at the commencement of the suspension period will be able to regain compliance with the closing price requirement if:

- at the pre-suspension expiration date of its grace period, it has a \$1.00 closing share price on the last trading day of the grace period and a \$1.00 average share price based on the preceding 30 trading days, or
- at the end of any calendar month during the suspension period it has a \$1.00 closing share price on the last trading day of such month and a \$1.00 average share price based on the 30 trading days preceding the end of such month.

Following the temporary suspension period, any new violations of the closing price requirement would be determined using trading data starting on June 30, 2009. Companies that were in a grace period prior to the suspension and that do not regain compliance during the suspension would receive the balance of any grace period in effect at the time of the suspension.

### **Extension of Lower Market Capitalization Requirement**

Under Section 802.01B, the NYSE will promptly delist any company if the company's average global market capitalization over a consecutive 30 trading-day period is less than \$25 million, irrespective of the

original listing standard under which the company listed. The temporary lowering of this market capitalization requirement to \$15 million, which the NYSE instituted in January 2009, was scheduled to remain in effect until April 22, 2009. See our January 29, 2009 Client Alert, "New York Stock Exchange Temporarily Lowers Market Capitalization Requirement" (available [here](#)), for a description of the NYSE's temporary change to the market capitalization requirement. Pursuant to the rule change filed on February 26, 2009, the NYSE has extended this temporary change through June 30, 2009.

Under the extension, until June 30, 2009, Section 802.01B will only apply to companies that fall below the minimum market capitalization requirement of \$15 million. The lowered \$15 million standard will apply to all companies for which the NYSE had not announced a suspension of trading pending delisting by January 22, 2009. This includes any company whose suspension under the \$25 million minimum has been stayed pending appeal and which is trading on the NYSE pending the outcome of the appeal process.

### **Purpose of Temporary Suspension and Extension**

The NYSE is taking these actions to provide temporary relief to listed companies from the extreme volatility and precipitous decline in trading prices in the U.S. and global equities markets and the NYSE expressed doubt that the turmoil in market conditions would subside prior to April 22, 2009, the original end date for the lower market capitalization requirement. During the suspension period, companies will continue to be subject to delisting for failure to comply with the NYSE's other listing requirements.

The NYSE noted that its filing was based in part on filings made by Nasdaq in connection with Nasdaq's temporary suspension of its continued listing requirements relating to bid price and market value of publicly held shares due to current market conditions. See our October 20, 2008 Client Alert, "Nasdaq Temporarily Suspends Minimum Bid Price and Market Value Requirements in Response to Market Turbulence" (available [here](#)), and our January 6, 2009 Client Alert, "Nasdaq Extends Temporary Suspension of Minimum Bid Price and Market Value Requirements" (available [here](#)), for a description of Nasdaq's temporary suspension of these continued listing requirements.

Although the rule changes are effective immediately, comments on the rule changes may be submitted to the SEC until 21 days after the date the proposal is published in the Federal Register. Information on submitting comments to the SEC can be found on the SEC's website at <http://www.sec.gov/rules/submitcomments.htm>.

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