BLOG

Nasdaq Proposes New Rules to Accelerate Penny Stock Delistings

AUGUST 19, 2024

CURRENT NASDAQ DELISTING RULES

Nasdaq has several rules that address the delisting of companies whose share price falls below $1.

1. **Listing Rule 5550(a)(2) – Minimum Bid Price Requirement**: This rule mandates that a company's stock must maintain a minimum bid price of $1 per share. If a company's stock falls below this threshold for 30 consecutive trading days, it is subject to potential delisting.
2. **Listing Rule 5810(c)(2)**: This rule provides a grace period for companies that fail to meet Nasdaq's minimum bid price requirement. Companies are given up to 180 calendar days to regain compliance before facing delisting.
3. **Listing Rule 5810(c)(3)(A)**: This rule allows a company to have an extended cure period, beyond the initial 180 days provided for under Listing Rule 5810(c)(2), to meet the minimum bid price requirement if the company has demonstrated to Nasdaq's satisfaction the steps it has taken, or plans to take, to address the noncompliance issue. Companies may receive an additional 180 days to regain compliance under this rule.

APPEALS TO THE NASDAQ LISTING QUALIFICATIONS HEARINGS PANEL

After the expiration of the additional 180 days provided under Listing Rule 5810(c)(2) or 5810(c)(3)(A), as applicable, companies that receive a delisting determination from Nasdaq may appeal this determination to the Nasdaq Listing Qualifications Hearings Panel (the "Panel"). Pursuant to Listing Rule 5815(c)(1)(A), the Panel may grant the company up to an additional 180 days to regain compliance (the "Stay Period"). Accordingly, under current Nasdaq listing rules, a company may receive a total of up to 540 days to regain compliance with Nasdaq's minimum bid price requirement. During the Stay Period, the listed shares of the noncompliant companies may continue to trade on Nasdaq.

PROPOSED AMENDMENTS TO NASDAQ RULES

Nasdaq's proposed rule changes are designed to expedite the delisting process for penny stocks by amending and adding to the existing rules:

Suspension of Securities During the Stay Period

Nasdaq proposes to adopt Listing Rule 5815(a)(1)(B)(ii)d, which, if adopted, would eliminate the Stay Period and immediately suspend a company's shares from trading if the company was already afforded the second 180-day compliance period under Rule 5810(c)(3)(A). Companies that appealed a delisting determination after the first 180-day compliance period would not be subject to proposed Listing Rule 5815(a)(1)(B)(ii)d and would not have their shares suspended during the Stay Period.

If a company's stock were to be suspended, its stock may trade in the over-the-counter market while the company's appeal is pending.

Excessive Reverse Splits

To address low and noncompliant stock prices, companies sometimes will conduct a reverse stock split to consolidate their outstanding shares and increase the price per share. However, Nasdaq has taken issue with what it views to be excessive use of reverse stock splits for this purpose. Nasdaq views this behavior as a sign of serious financial or operational distress and believes that it undermines investor protection, making such companies less suitable for trading on Nasdaq.

Accordingly, Nasdaq has proposed an amendment to Listing Rule 5810(c)(3)(A)(iv) that, if adopted, would automatically suspend companies that have become noncompliant with Nasdaq's minimum bid requirement within one year of a reverse stock split (regardless of the ratio). No compliance period would be afforded to these companies, although they would still be able to appeal the automatic delisting to the Panel and may receive a Stay Period of up to 180 days.

The proposed amendment supplements Nasdaq's prior amendment in 2020, which provided for an automatic suspension of a company's stock if it fails to maintain compliance with the minimum bid price requirement within two years of completing one or a series of reverse stock splits resulting in a cumulative ratio greater than or equal to 250:1.

RATIONALE BEHIND THE PROPOSAL

Nasdaq's rationale for these proposed changes is rooted in the need to address the risks associated with penny stocks, which are often characterized by high volatility and lower transparency. By accelerating the delisting process, Nasdaq aims to reduce the time that problematic stocks remain on the exchange, thereby protecting investors from potential losses and market manipulation.

IMPACT ON INVESTORS AND COMPANIES

For investors, the proposed rule changes are intended to provide a more reliable trading environment by ensuring that only companies meeting rigorous standards are listed on Nasdaq. This could help mitigate the risks associated with investing in lower-priced stocks of less transparent companies.

For companies, the new rules will require a greater focus on maintaining compliance with Nasdaq's standards. While this may pose a challenge for some smaller companies, it also provides an opportunity for them to strengthen their market position and governance practices.

Nasdaq's proposed rule changes will take effect within 45 days of their publication in the Federal Register, subject to the SEC seeking additional time to approve or reject Nasdaq's proposal.

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