

Listing Council Decision 2018-4

Identification
Number 1664**Rule 5250(c)(1). Obligation to File Periodic Financial Reports**

A Company shall timely file all required periodic financial reports with the Commission through the EDGAR System or with the Other Regulatory Authority. A Company that does not file through the EDGAR System shall supply to Nasdaq two (2) copies of all reports required to be filed with the Other Regulatory Authority or email an electronic version of the report to Nasdaq at continuedlisting@nasdaq.com. All required reports must be filed with Nasdaq on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with Nasdaq shall contain audited financial statements.

Issue: At issue is whether the Listing Council has discretion to allow a company to remain listed notwithstanding that it has been and remains delinquent in filing its periodic financial reports.

Determination: Affirm the decision to suspend and delist the Company.

The Listing Council finds that delisting the Company is appropriate due to the Company's non-compliance with Nasdaq Listing Rule 5250(c). Although the Company regained partial compliance during the pendency of the appeal, it remains delinquent as its most recent Quarterly Report on Form 10-Q. Even if the Company had regained compliance fully with Rule 5250(c), the Listing Council would have still concluded, consistent with its discretion under Rule 5101, that the continued listing of its securities on Nasdaq would be inadvisable. While the Company has made significant strides to date to reform its corporate culture, these strides are insufficient to overcome the Listing Council's concerns about whether the Company – whose Board of Directors and executive management team were almost entirely re-constituted only a few months ago – has regained its proper footing.

Publication Date*: 11/29/2018

Identification Number: 1664

Listing Council Decision 2017-5

Identification
Number 1473**Filing Delinquency**

Rule 5250(c)(1): A Company shall timely file all required periodic financial reports with the Commission through the EDGAR System or with the Other Regulatory Authority. A Company that does not file through the EDGAR System shall supply to Nasdaq two (2) copies of all reports required to be filed with the Other Regulatory Authority or email an electronic version of the report to Nasdaq at continuedlisting@nasdaq.com. All required reports must be filed with Nasdaq on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with Nasdaq shall contain audited financial statements.

Issue: May the Company remain listed notwithstanding is the fact that: (1) it was, until August 31, 2017, delinquent in filing its Quarterly Reports on Form 10-Q for the quarters ended September 30, 2016 and December 31, 2016, in violation of Nasdaq Listing Rule 5250(c); and (2) it was, until August 25, 2017, delinquent in filing its Annual Report on Form 10-K for the fiscal year ended June 30, 2016, in violation of Nasdaq Listing Rule 5250(c)?

Determination: Overrule the Hearing Panel decision to suspend and delist the Company.

The Hearing Panel in this case had previously granted the Company extensions to regain compliance with the Rule – until July 30, 2017 to file its delinquent Form 10-K and until August 31, 2017 to file its delinquent Form 10-Qs – but it revoked those extensions when the Company failed to provide the Panel, as directed, with a specific update from its auditor as to the anticipated schedule for completion of the audit. Although the Council agreed with the Panel that the Company should have been more forthcoming and specific about the

status of the audit work, the Council concluded that the Company's update was not so inadequate as to warrant the Panel revoking its extensions. To the extent that the Panel was concerned that Company's status report was too vague, it could have and should have requested clarification from the Company and/or its auditor before it took the drastic step that it did. In sum, the Council concluded that the Panel acted too hastily and should have given the Company a chance to complete its work to regain compliance with the Rule.

Publication Date*: 12/6/2017

Identification Number: 1473

Listing Council Decision 2017-4

Identification
Number 1472

Business Combinations with non-Nasdaq Entities Resulting in a Change of Control

Rule 5110(a): A Company must apply for initial listing in connection with a transaction whereby the Company combines with a non-Nasdaq entity, resulting in a change of control of the Company and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing. In determining whether a change of control has occurred, Nasdaq shall consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the Company. Nasdaq shall also consider the nature of the businesses and the relative size of the Nasdaq Company and non-Nasdaq entity. The Company must submit an application for the post-transaction entity with sufficient time to allow Nasdaq to complete its review before the transaction is completed. If the Company's application for initial listing has not been approved prior to consummation of the transaction, Nasdaq will issue a Staff Delisting Determination and begin delisting proceedings pursuant to the Rule 5800 Series.

Issue: Did a change of control of the Company occur when it executed the first phase of a three phase business transaction with a non-listed company, such that the Company violated Nasdaq Listing Rule 5110(a) when it proceeded with the transaction without first applying to the Exchange for permission to re-list the Company's securities? Even if Phase I of the transaction did not itself effect a change of control of the Company, did Rule 5110(a) apply at the time of Phase I, nevertheless, due to the prospective occurrence of Phase II, which the Company admitted would involve a change of control if and when it occurred?

Determination: Overrule the Hearing Panel decision to suspend and delist the Company.

In answering the first of these questions, the Council applied the multi-factor change of control test set forth in Rule 5110(a). It found that the factors pointed in both directions. On the one hand, the Council agreed with Staff that certain factors were indicative of a change of control, including the fact that Phase I involved a substantial change in the nature of the Company's business and that it involved a replacement of two of the Company's senior executives with those affiliated with other party to the transaction. On the other hand, however, changes to the composition of the Company's Board of Directors that occurred in Phase I did not result in the new Board being dominated by Directors who were affiliated with or under the control of the other party. Moreover, Phase I of the transaction did not involve a transfer of majority ownership or voting interests in the Company to the other party or its affiliated shareholders. When analyzing these factors in the aggregate, the Council concluded that Phase I did not result in a change of control of the Company. The Council found it compelling that Staff could not point to any prior decision of the Council in which the Exchange had deemed Rule 5110(a) (or its predecessor Rules) to be applicable to a transaction involving the transfer of ownership or voting control of less than 20 percent of a company's shares. The Council also took note of the fact that the Company's independent accountants had opined, for accounting purposes, that Phase I did not amount to an acquisition of the Company for similar reasons.

As to the second question, the Council agreed with the Company that Staff erred in concluding that Phases II and III of the transaction would necessarily follow execution of Phase I, such that it was unreasonable for Staff to have required compliance with Rule 5110(a) prior to execution of Phase I. Although the Phases II and III of the transaction were related to Phase I, they were distinct from it in that the prerequisite to their occurrence was a shareholder vote. If the Company's shareholders did not approve of the actions associated with Phase II, then neither Phase II nor Phase III would proceed and no change of control of the Company would occur. Given that voting control of the Company's shares continued to rest with its pre-transaction shareholders following execution of Phase I, it was not a foregone conclusion that the Company's shareholders would approve Phase II. Under these circumstances, the Council concluded that it was premature to require the Company to obtain permission from the Exchange to re-list its shares in accordance with Rule 5110(a) as of the time at which it executed Phase I.

Publication Date*: 12/6/2017

Identification Number: 1472

Listing Council Decision 2017-1

Identification
Number 1367

Filing Delinquency

Rule 5250(c)(1): A Company shall timely file all required periodic financial reports with the Commission through the EDGAR System or

with the Other Regulatory Authority. A Company that does not file through the EDGAR System shall supply to Nasdaq two (2) copies of all reports required to be filed with the Other Regulatory Authority or email an electronic version of the report to Nasdaq at continuedlisting@nasdaq.com. All required reports must be filed with Nasdaq on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with Nasdaq shall contain audited financial statements.

Issue: At issue is whether the company should remain listed notwithstanding that it has been and remains delinquent in filing its annual report and quarterly filings notwithstanding its receipt of several prior periods of exemption from Rule 5250(c).

Determination: Affirm the decision to suspend and delist the Company.

In light of the facts and circumstances of this matter, which include the fact that the Company has been delinquent in filing its periodic financial reports with the SEC for a prolonged period of time, in violation of Rule 5250(c), and that it has failed to regain compliance with the Rule notwithstanding its receipt from the Hearing Panel of multiple extensions of time within which to do so, the Listing Council finds that the Company's vague projections as to when it will regain compliance with the Rule lack credibility, that its request for a further extension is unwarranted, and that delisting of the Company's securities is appropriate, pursuant to Rule 5820(d)(4).

Delisting does not bar the Company from applying to relist on Nasdaq, or another U.S. exchange. In this regard, should the Company resolve the issues that give rise to this matter it may reapply to list on Nasdaq.

Publication Date*: 5/3/2017

Identification Number: 1367

Listing Council Decision 2016-1

Identification
Number 1288

Public Interest Concern, Filing Delinquency, and Failure to Pay Fees

Rule 5101: Staff has raised public interest concerns over the degree of control the Company has over subsidiary.

Rule 5250(c)(1): A Company shall timely file all required periodic financial reports with the Commission through the EDGAR System or with the Other Regulatory Authority. A Company that does not file through the EDGAR System shall supply to Nasdaq two (2) copies of all reports required to be filed with the Other Regulatory Authority or email an electronic version of the report to Nasdaq at continuedlisting@nasdaq.com. All required reports must be filed with Nasdaq on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with Nasdaq shall contain audited financial statements.

Rule 5250(f): A Company is required to pay all applicable fees as described in the Rule 5900 Series.

Issue: At issue is whether the company should remain listed notwithstanding that it is delinquent in filing its annual report, failed to publicly disclose material information timely, and public interest concerns raised by Nasdaq's Staff.

Determination: Affirm the decision to suspend and delist the Company.

In light of the facts and circumstances of this matter, including but not limited to, the conduct of the Company and its board of directors with respect to the Company's independent auditor, the Company's independent counsel, and Nasdaq in the delisting proceeding, particularly including: the events giving rise to the resignation of the Company's independent auditor, which concluded that it could no longer accept the representations of the Company's Chairman and CEO, and determined that it could not continue as the Company's auditor unless he was separated from the Company; the independent auditor's finding that the Company does not appear to have an effective board with the ability to discharge its responsibilities; and evidence from the Company's independent counsel that the Company made misrepresentations to Nasdaq in its effort to remain listed; the the Listing Council finds that delisting the Company is appropriate, pursuant to Rules 5101, 5250(c)(1), and 5250(f).

The Listing Council conducts a de novo review of matters before it and, accordingly, it may consider issues not raised in the matter before the Panel or relied on by the Panel as a basis for its decision.

Rule 5101 provides Nasdaq with broad discretionary authority over the listing of securities on Nasdaq in order to maintain the quality of and public confidence in the market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to protect investors and the public interest. The importance of timely filing of financial statements, as required by Rule 5250(c)(1), cannot be understated. Moreover, the Listing Council notes that the Company failed to pay its annual listing fees, as required by Rule 5250(f). Taken together, the Listing Council concludes that the Company does not fully understand the obligations of a public company. Based on the facts and circumstances of this matter and for the reasons stated above, the Listing Council determined to delist the Company's shares from Nasdaq. Delisting does not bar the Company from applying to relist on Nasdaq, or another U.S. exchange. In this regard, should the Company resolve the issues that give rise to this matter it may reapply to list on Nasdaq.

Listing Council Decision 2014-3

Identification
Number 1134**Bid Price and Stockholders' Equity****Rule 5505: Initial Listing of Primary Equity Securities**

A Company applying to list its Primary Equity Security on the Capital Market must meet all of the requirements set forth in Rule 5505(a) and at least one of the Standards in Rule 5505(b).

(a) Initial Listing Requirements for Primary Equity Securities:

- (1) (A) Minimum bid price of \$4 per share

Rule 5550: Continued Listing of Primary Equity Securities

A Company that has its Primary Equity Security listed on the Capital Market must continue to meet all of the requirements set forth in Rule 5550(a) and at least one of the Standards set forth in Rule 5550(b). Failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series.

(b) Continued Listing Standards for Primary Equity Securities:

- (1) Equity Standard: Stockholders' equity of at least \$2.5 million;
- (2) Market Value of Listed Securities Standard: Market Value of Listed Securities of at least \$35 million; or
- (3) Net Income Standard: Net income from continuing operations of \$500,000 in the most recently completed fiscal year or in two of the three most recently completed fiscal years.

Issue: At issue in this matter is whether the Company should remain listed, yet suspended from trading, notwithstanding that the Company has not received approval of its listing application for listing of the newly-merged company, which was treated as a change of control for purposes of Rule 5110(a), and because the Company does not comply with the Capital Market \$4 bid price initial listing requirement of Rule 5505(a)(1)(A). Moreover, it is unclear whether the Company meets all other initial listing standards for listing on the Capital Market.

Prior to its merger, the Company did not comply with Rule 5550(b)(1), which requires a Capital Market company to maintain a minimum of \$2.5 million in stockholders' equity for continued listing.

Determination: Reverse the Panel decision to delist the Company.

It is clear from the record, the Company has had difficulty in resolving what it believes to be the only Capital Market initial listing requirement that it does not meet, namely the \$4 bid price requirement. Although it appears that there is some disagreement over whether the Company meets all other listing standards other than bid price, the Listing Council need not settle this factual issue. The Listing Council notes that the Company received approval of, and implemented, a stock split as it had committed to do. The Company requested an extension until September 30, 2014 to evidence compliance with all Capital Market initial listing standards. In light of the brief nature of the extension and because the Company's securities are currently suspended from trading on Nasdaq, the Listing Council is willing to grant the Company a brief extension to evidence compliance with all initial listing requirements for listing on the Capital Market and to receive approval of an application for listing thereon from Staff.

Accordingly, the Listing Council reverses the Panel decision to delist the Company and grants the Company through September 30, 2014 to inform the Listing Council that it has achieved compliance with all requirements for initial listing on the Capital Market and received approval of an initial listing application for listing thereon. Should the Company fail to meet the terms of this decision, the Company's securities will be delisted from Nasdaq.

Listing Council Decision 2014-2

Identification
Number 1133**Disclosure, Filing Delinquency, and Public Interest Concern**

Rule 5101: Nasdaq has broad discretionary authority over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

Rule 5250(b)(1): Except in unusual circumstances, a Nasdaq-listed Company shall make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions.

Rule 5250(c)(1): A Company shall timely file all required periodic financial reports with the Commission through the EDGAR System or with the Other Regulatory Authority. A Company that does not file through the EDGAR System shall supply to Nasdaq two (2) copies of all reports required to be filed with the Other Regulatory Authority or email an electronic version of the report to Nasdaq at continuedlisting@nasdaq.com. All required reports must be filed with Nasdaq on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with Nasdaq shall contain audited financial statements.

Issue: At issue in this matter is whether the Company should remain listed, yet suspended from trading, notwithstanding that it is delinquent in filing its annual report, failed to publicly disclose material information timely, and public interest concerns have been raised based on the Company's bankruptcy.

Determination: Affirm the decision to suspend and delist the Company.

In light of the facts and circumstances of this matter, including the Company's failure to file its Form 10-K by its stated deadline, the Listing Council finds that delisting for failure to file its Form 10-K for the fiscal year ended December 31, 2013 is a valid basis under Rule 5250(c)(1) for delisting the Company.

The Listing Council conducts a de novo review of matters before it and, accordingly, it may consider issues not raised in the matter before the Panel or relied on by the Panel as a basis for its decision. One such issue, which was raised by Staff yet not noted as a basis for delisting in the Panel decision, is Staff's determination that delisting the Company was warranted given it had violated Rule 5250(b)(1). Rule 5250(b)(1) states, in part, that a "Nasdaq-listed Company shall make prompt disclosure to the public through any Regulation FD compliant method (or combination of methods) of disclosure of any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions." Staff argues that the Company violated Rule 5250(b)(1) when it failed to disclose the loss of control of a subsidiary. The record shows that, as of November 22, 2013, the Company knew that the former CEO possessed the subsidiary's chops and had advised the Company that he would not return them. Furthermore, the Company was aware on November 27, 2013 that the former CEO had threatened the validity of the VIE structure of the Company. By the Company's own admission, it realized on November 27, 2013 that there was a potentially serious challenge to the structure of the enterprise, yet waited until December 11, 2013 to disclose the issue. Staff believes, and the Listing Council agrees, that the Company had an obligation to disclose these issues pursuant to Rule 5250(b)(1) far sooner than when the Company ultimately disclosed the issues in December 2013. To argue that an investor would not find these developments material information that would reasonably be expected to affect the value of its securities or influence investors' decisions, is nonsensical.

Rule 5101 provides Nasdaq with broad discretionary authority over the listing of securities on Nasdaq in order to maintain the quality of and public confidence in the market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to protect investors and the public interest. The importance of timely filing of financial statements, as required by Rule 5250(c)(1), cannot be understated. Moreover, the Listing Council notes that the Company was slow, or failed altogether, to disclose material information that would reasonably be expected to affect the value of its securities or influence investors' decisions, as required by Rule 5250(b)(1). Taken together, the Listing Council concludes that the Company does not fully understand the obligations of a public company. Based on the facts and circumstances of this matter and for the reasons stated above, the Listing Council has determined to delist the Company's shares from Nasdaq. Delisting does not bar the Company from applying to relist on Nasdaq, or another U.S. exchange. In this regard, should the Company resolve the issues that give rise to this matter it may reapply to list on Nasdaq.

Publication Date*: 11/19/2014

Identification Number: 1133

Listing Council Decision 2013-4

Identification
Number 1112

Quantitative Listing Standards

Rule 5505(a)(3): a company must meet have at least 300 Round Lot Holders to list on the Capital Market.

Rule 5505(b): a company must meet one of the following standards to list on the Capital Market:

(1) Equity Standard

- (A) Stockholders' equity of at least \$5 million;
- (B) Market Value of Publicly Held Shares of at least \$15 million; and
- (C) Two year operating history.

(2) Market Value of Listed Securities Standard

- (A) Market Value of Listed Securities of at least \$50 million (current publicly traded Companies must meet this requirement and the price requirement for 90 consecutive trading days prior to applying for listing if qualifying to list only under the Market Value of Listed Securities Standard);
- (B) Stockholders' equity of at least \$4 million; and
- (C) Market Value of Publicly Held Shares of at least \$15 million.

(3) Net Income Standard

- (A) Net income from continuing operations of \$750,000 in the most recently completed fiscal year or in two of the three most recently completed fiscal years;
- (B) Stockholders' equity of at least \$4 million; and
- (C) Market Value of Publicly Held Shares of at least \$5 million.

Prior to its conversion from a special purpose acquisition company ("SPAC") to an operating company, the Company did not comply with:

Rule 5550(a)(3): which requires a company to have a minimum 300 public holders for continued listing on the Capital Market.

Rule 5550(a)(4): which requires a company to have a minimum 500,000 publicly held shares on the Capital Market.

Issue: Should the Company, which is a SPAC, be granted an extension to remain listed on Nasdaq, notwithstanding a Panel decision that affirmed Staff's determination to delist the Company based on its non-compliance with the Capital Market continued listing standards, and which, post-acquisition, does not meet Capital Market initial listing standards? ^[1]

Determination: Affirm the decision to suspend and delist the Company.

The Company has not complied with continued, and now initial, listing standards. It has repeatedly requested extensions of time to conclude transactions to regain compliance with continued listing standards or to meet initial listing standards, yet each time failed to fully carry out what was promised to regain compliance. Now the Company requests that the Listing Council grant it additional time to regain compliance with initial listing standards. For the reasons stated below, the Listing Council denies the Company's request.

Companies applying for listing on Nasdaq must meet initial listing standards before being approved. For the vast majority of companies, Staff's denial of initial listing may be appealed and the company remains unlisted on Nasdaq during the appellate process. SPACs, by contrast, may remain listed on Nasdaq while pending an appellate review of Staff and subsequent Panel determinations regarding such a company's eligibility for initial listing. The Company does not dispute that it is currently ineligible for initial listing and it has not presented any compelling reason to grant it continued listing until such a time that it can meet initial listing standards. As noted by Staff in its brief to the Listing Council, the Company's solution remains unchanged, namely that it is working diligently to complete transactions that will allow it to meet Nasdaq's initial listing standards. The Listing Council does not find the Company's plan of compliance adequately definitive to find that compliance is imminent. The Listing Council notes that the Company is not precluded from reapplying to list on Nasdaq once it determines that it meets initial listing standards.

^[1]A SPAC must meet continued listing standards upon listing on NASDAQ. Once the SPAC completes its conversion to an operating company, it must meet initial listing standards.

Initial Listing Denial Review

Rule 5815: When a Company receives a Staff Delisting Determination or a Public Reprimand Letter issued by the Listing Qualifications Department, or when its application for initial listing is denied, it may request in writing that the Hearings Panel review the matter in a written or an oral hearing. This section sets forth the procedures for requesting a hearing before a Hearings Panel, describes the Hearings Panel and the possible outcomes of a hearing, and sets forth Hearings Panel procedures.

Issue: At issue in this matter is whether the Company has a right under Nasdaq rules to an oral Panel hearing. Rule 5815 permits a Company to appeal to a Panel a Staff determination to deny initial listing. The relevant part of Rule 5815 states:

When a Company receives a Staff Delisting Determination or a Public Reprimand Letter issued by the Listing Qualifications Department, **or when its application for initial listing is denied**, it may request in writing that the Hearings Panel review the matter in a written or an oral hearing.

To determine whether the Company may avail itself Rule 5815, a finding must be made that the Company's initial listing application was denied by Staff. The Company believes Staff orally denied the Company's application on a conference call, while Staff asserts no such denial was given.

Determination: Affirm the decision that a denial of initial listing has not occurred, and therefore a hearing on the matter is not yet permitted.

The Listing Council recognizes that Staff's review of initial listing applications is not limited by any stated timeframe. The Listing Council understands that each application for listing presents its own unique set of facts, and thus the process does not lend itself to rigid deadlines. Nonetheless, Staff has an obligation to move the process forward, to the extent it is within its control, in a reasoned and deliberate fashion. An applicant must have some notion of where it stands in terms of the listing process, and ultimately what it must do to satisfy issues raised by Staff such that the Staff can make an informed listing determination. As is often the case during the application process, significant changes or events may occur within a company, which require Staff investigation and may extend the application process.

In the present case, the Company applied to list in September 2011. There is no question that Staff remained in contact with the Company throughout the application process, and issued multiple requests for information over the course of the following year. Staff applied the reverse merger rules, which made the Company ineligible for listing until November 23, 2012. It is also clear that the Company encountered significant deterioration of its business and had entered into significant acquisition transactions, which fundamentally changed the nature of the Company's operations. As a consequence, the Listing Council does not believe it unreasonable for Staff to postpone making a listing determination until audited financial information reflecting the effect of the recent acquisitions and the state of the Company's historic business is publicly disclosed. In sum, Staff kept the Company informed of its concerns, including that it was applying Rules 5005(a)(35) and 5110(c) to certain transactions, requested information from the Company multiple times and, in light of acquisitions occurring during the period and the significant deterioration in the Company's business, provided the Company with a time frame in which the Staff will make its determination, namely a reasonable time after the review of the Company's Form 10-K and Form 10-Q. For these reasons, the Listing Council is satisfied that the process in this matter has progressed in a reasonable manner.

On the issue of whether the Staff has denied the Company's listing application and therefore providing it with a right to a Panel review, the Listing Council is unable to conclude such a denial of the initial listing application was made. The parties' recollections of the conference call diverge significantly on whether Staff denied the Company's initial listing application. Both parties issued letters shortly after the call stating their beliefs with regard to the call's substance. The Company believes that Staff unequivocally denied initial listing, whereas Staff denies any such decision was made and states that it would not make such a decision until it had reviewed the Company's financials in its upcoming Forms 10-K and 10-Q. The Listing Council finds that it is a poor practice to merely orally inform a company of such an important decision and believes that the recently-effective rule change to require a written initial listing determination is both appropriate and prudent. In light of the contradictory evidence in the record and the reasonableness of Staff's determination to review of the Company's financial statements prior to making a determination, the Listing Council is unable to conclude that Staff denied the Company's initial listing application. As such, the Company has no right to a Panel hearing under Rule 5815 as the matter is not ripe for review.

Accordingly, the Listing Council affirms the Panel decision to deny an oral hearing to the Company.

Publication Date*: 8/21/2013

Identification Number: 1088

Public Interest

Rule 5101: Nasdaq has broad discretionary authority over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

Issue: Should the Company be granted an extension to remain listed on Nasdaq, notwithstanding a Panel decision that affirmed Staff's determination to delist the Company based on public interest concerns Staff identified in a recent press release and subsequent Company disclosures, which include: (1) a liquidity crisis, and a related line of credit from an entity controlled by Company employees; (2) recent management turnover and the reasons for management resignations; (3) corporate structuring that precludes transfer of cash or other assets from the Company's Chinese subsidiaries to the Company; (4) the Company's past association with a stock promoter with a regulatory history, and trading activity in the Company's stock by certain brokers, significant shareholders and the former CEO?

Determination: Affirm the decision to delist the company.

Fundamental to the Company's argument is its assertion that Staff applied its own business judgment in determining to delist the Company and as such the determination, and the Panel decision, was ultra vires. This argument is without merit. There is no evidence that Staff acted outside of the scope of authority provided by either Rule 4120(a)(5) or Rule 5101. Rule 4120(a)(5) permits Nasdaq to halt a listed security when it requests information from the issuer relating to material news, its ability to meet Nasdaq listing qualification requirements, or any other information which is necessary to protect investors and the public interest. The Listing Council finds that Staff had satisfied the requirements of Rule 4120(a)(5) as a recent press release did represent material news. Moreover, there is no dispute that the disclosure raised questions concerning the Company's ability to meet Nasdaq's listing standards given the significant resignations, announcement of the retention of a restructuring adviser, and the entry into the revolving loan agreement to meet the Company's "immediate cash needs."

Turning to the exercise of its discretionary authority under Rule 5101, the Company's determination to allow a \$33 million cash balance to decrease to approximately \$25,000 over the course of 14 months without a means to adequately fund the Company's operations is very concerning to Nasdaq and a valid basis to exercise its discretionary authority under Rule 5101 to delist the Company. The Listing Council agrees with Staff's position that bringing the Company to the brink of insolvency by spending down corporate assets to this level is not an ordinary event, but rather irresponsible, reckless and inconsistent with conduct expected of a Nasdaq-listed company. In addition, the Company was slow to react to its liquidity crisis, as there is adequate evidence in the record to conclude that it knew of its liquidity issues several months before it secured the related party revolving loan, in contrast to the Company's assertion that there were no other alternatives due to a lack of time. While remedial steps were taken by the Company, it is unclear that such steps will adequately address the issues that gave rise to Staff's delisting determination. The Company remains unable to assert any material control over its subsidiaries in terms of funding the Company's operations, and receives its operating capital from a revolving loan agreement with a company controlled by subsidiary executives. In addition, the lack of control of its subsidiaries presents a bevy of concerns, including questions surrounding the Company's internal controls over accounting and other U.S. federal regulatory obligations. As noted in the record, the new Company executives provided a qualified attestation to the Company's financial reports.

Addressing the Company's assertion that the delisting is not in the public interest, the Commission has long recognized that Nasdaq is vested with discretionary authority to deny an issuer's request that its securities be included in Nasdaq, and holds that Nasdaq's primary concern in making listing determinations should be the protection of prospective investors. In *Tassaway*, the SEC stated that "while exclusion from Nasdaq may hurt existing shareholders, the primary emphasis must be placed on the interest of prospective public investors and that this latter group is entitled to assume that the securities in [Nasdaq] meet [its] standards." It is against this regulatory backdrop that the Listing Council finds that it was appropriate to deny continued listing to a company that (1) allowed a \$33 million cash balance to decrease to approximately \$25,000 over the course of 14 months without a means to adequately fund the Company's operations; (2) chose to rely on funding from employees of its Chinese subsidiaries to avoid insolvency, with no apparent consideration of other sources; (3) experienced significant management turnover; (4) has a lack of contractual arrangements with its Chinese subsidiaries that allow for the transfer of funds from China to the U.S. for business expenses.

Although the Company's ties to a stock promoter with a regulatory history and his affiliates continued during the time that the Company took the actions at issue in this matter through the initiation of the appeal to the Listing Council, it appears that the Company has taken action to sever such ties at this time. Moreover, as the Panel noted, the Company has taken some steps to resolve some of the issues that have raised Staff's concerns. Nonetheless, the Listing Council does not believe that the Company should be listed on Nasdaq at this time. The issues arising from the recent press release and Staff's subsequent investigation are very concerning, and are representative of a Company clearly not prepared for the rigors and responsibilities that are demanded of listed companies. As such, it is consistent with the discretion afforded under Rule 5101 to delist the Company to protect investors while allowing the Company to demonstrate over time its ability to act as a responsible corporate citizen.

Accordingly, the Listing Council affirms the Panel decision to deny continued listing to the Company based on the exercise of the broad discretionary authority under Rule 5101.

Publication Date*: 8/21/2013

Identification Number: 1087

Listing Council Decision 2011-7

Identification
Number 1036

Rule 5101: NASDAQ is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. NASDAQ stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. NASDAQ Companies, from new public Companies to Companies of international stature, are publicly recognized as sharing these important objectives. NASDAQ, therefore, in addition to applying the enumerated criteria set forth in the Listing Rule 5000 Series, has broad discretionary authority over the initial and continued listing of securities in NASDAQ in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. NASDAQ may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on NASDAQ inadvisable or unwarranted in the opinion of NASDAQ, even though the securities meet all enumerated criteria for initial or continued listing on NASDAQ. In all circumstances where the Listing Qualifications Department (as defined in Listing Rule 5805) exercises its authority under Listing Rule 5101, the Listing Qualifications Department shall issue a Staff Delisting Determination under Listing Rule 5810(c)(1), and in all circumstances where an Adjudicatory Body (as defined in Listing Rule 5805) exercises such authority, the use of the authority shall be described in the written decision of the Adjudicatory Body.

Issue: The company was delisted by a Hearings Panel for public interest concerns, noting that the findings of an independent report of the company's audit committee form the basis of its determination. The report described multiple concerns, which included gradual cooperation with the investigation, false and misleading statements made by Company management to the former auditor and the investigatory team, related party dealings, likely violations of the Foreign Corrupt Practices Act, and a lack of adequate disclosure. For example, the report noted that the CFO had misrepresented the balances and transactions occurring in an off-the-books cash account, one of which include false statements to the investigatory team concerning off-balance sheet accounts. When confronted with evidence of his misrepresentation, the CFO admitted to withholding the details of that account from the public auditor and from the investigatory team. In another instance noted in the report, RMB 21 million was transferred into the personal account of the company's Accounting Manager with no collateral or written agreement, which "appears to violate the PRC foreign exchange control regulations (SAFE) and is a matter of grave concern given the company's decision to transfer a significant sum to an employee of the company with no documentation or security." The report made six recommendations, including a recommendation that the board of directors examine the responsibilities and duties of the CFO.

In its decision to delist the company, the Hearings Panel cited the extent and nature of serious accounting issues uncovered by the investigation, which were greater and more extensive than had appeared evident at the time of the Hearings Panel hearing, and include flagrant fraudulent behavior by management, including the CEO, who remains in his position. Further, the Hearings Panel noted that it believed the changes that would be necessary to enable the company to meet the regulatory standards of listed companies are so fundamental and far-reaching that the process is likely to take significant time. Moreover, the Hearings Panel stated that the company abused the trust of its shareholders and made misleading representations to Staff, the Hearings Panel, its auditors, and Audit Committee's investigative team during the course of this delisting process and the investigation, and provided examples thereof in its decision. The company appealed the decision to the Listing Council.

Determination: Affirmed. After a review of the record in this matter, the Listing Council affirms the Hearings Panel decision. The Listing Council applauds the recent efforts that the company has taken to remediate the serious issues identified by its public accounting firm and further detailed in the report, yet there remain additional measures that must be completed. The Listing Council believes that the company is not appropriate for a NASDAQ listing at this time. The issues identified in the report are very concerning, and are representative of a company clearly not prepared for the rigors and responsibilities that are demanded of listed companies. The report identifies numerous violations of law as well as dishonesty on the part of management. In its arguments before the Listing Council, it is clear the company fundamentally confuses the reason for taking the remedial steps to address the findings of the report. The remedial steps that the company has taken, and commits to take, are not done for the purpose of securing a continued listing on NASDAQ, but rather to make it a better corporate citizen. The success of such efforts in this regard is something that can only be demonstrated over time.

The company does not have an inalienable right to be listed on NASDAQ. NASDAQ is charged with the protection of investors. A listing on NASDAQ is a privilege earned by companies that are able to demonstrate not only quantitative wherewithal, but also stringent qualitative characteristics required of all listed companies. Rule 5101 provides NASDAQ with "broad discretionary authority" over the

listing of securities on NASDAQ “in order to maintain the quality of and public confidence in the market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to protect investors and the public interest.” This authority stems directly from NASDAQ’s delegated responsibilities under the Securities Exchange Act of 1934. Rule 5101 is not invoked lightly and, in instances in which a public interest concern is identified, the issues are very serious. In the present case, while remedial steps were taken by the company, it is unclear that such steps will adequately address the company’s apparent culture of non-compliance with U.S. and PRC laws and regulations, so that the company is able to adequately fulfill its responsibilities as a listed public company. As such, it is consistent with the discretion afforded under Listing Rule 5101 to delist the company to protect investors while allowing the company to demonstrate over time its ability to act as a responsible corporate citizen.

Publication Date*: 7/31/2012

Identification Number: 1036

Listing Council Decision 2011-6

Identification
Number 599

Rule 5101: NASDAQ is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. NASDAQ stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. NASDAQ Companies, from new public Companies to Companies of international stature, are publicly recognized as sharing these important objectives. NASDAQ, therefore, in addition to applying the enumerated criteria set forth in the Listing Rule 5000 Series, has broad discretionary authority over the initial and continued listing of securities in NASDAQ in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. NASDAQ may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on NASDAQ inadvisable or unwarranted in the opinion of NASDAQ, even though the securities meet all enumerated criteria for initial or continued listing on NASDAQ. In all circumstances where the Listing Qualifications Department (as defined in Listing Rule 5805) exercises its authority under Listing Rule 5101, the Listing Qualifications Department shall issue a Staff Delisting Determination under Listing Rule 5810 (c)(1), and in all circumstances where an Adjudicatory Body (as defined in Listing Rule 5805) exercises such authority, the use of the authority shall be described in the written decision of the Adjudicatory Body.

Issue: The company was delisted by a Hearings Panel for public interest concerns, finding that it was not appropriate to maintain the listing of a company that is a public shell when a proposed merger designed to resolve the deficiency would not occur for some months, and a listing in the meantime may signal a determination that the resulting entity meets all NASDAQ requirements for listing, a determination it noted had not and could not make at that time. The Hearings Panel also noted that, while the information provided suggested the new entity would meet the quantitative standards, those are not the only standards required for approval. The Hearings Panel noted that the merger was contingent upon the company retaining its listing, and there appear to be no obvious synergies between the two companies and their past, current, and future operations. As such, the Hearings Panel concluded that merger partner’s interest in the company is the NASDAQ listing, which it further concluded raised legitimate questions about the merger’s benefits to shareholders and investors. Subsequent to the issuance of the Hearings Panel Decision, the company filed a Form 8-K with the Securities and Exchange Commission that disclosed the mutual termination of the merger agreement.

Determination: Affirmed. After a review of the record in this matter, the Listing Council affirms the Hearings Panel Decision. Upon review of the record and the disclosure concerning the termination of the merger agreement, the Listing Council concludes that the company is a shell and should be delisted. The issue before the Listing Council is whether a company with minimal employees, no operating business, and no appreciable revenues on a pro-forma basis over an extended period should be afforded continued listing, albeit suspended from trading on NASDAQ, while it seeks additional merger partners. The Listing Council does not believe this is in the best interests of stockholders or the investing public. The company has had more than one planned or contemplated merger fall through in the past six months and there is no evidence that a near term merger will be completed.

Pursuant to Listing Rule 5101, NASDAQ has “broad discretionary authority” over the listing of securities on NASDAQ “in order to maintain the quality of and public confidence in the market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to protect investors and the public interest.” This authority stems directly from NASDAQ’s delegated responsibilities under the Securities Exchange Act of 1934. The Listing Council does not believe that allowing the company to remain listed with minimal employees, no operations, and no merger transaction on the horizon would in any way serve to protect the investing public.

Accordingly, the Listing Council affirms the Panel decision to delist the company’s securities based on the exercise of the broad discretionary authority of Listing Rule 5101.

Publication Date*: 7/31/2012

Identification Number: 599

Rule 5101: NASDAQ is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. NASDAQ stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. NASDAQ Companies, from new public Companies to Companies of international stature, are publicly recognized as sharing these important objectives. NASDAQ, therefore, in addition to applying the enumerated criteria set forth in the Listing Rule 5000 Series, has broad discretionary authority over the initial and continued listing of securities in NASDAQ in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. NASDAQ may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on NASDAQ inadvisable or unwarranted in the opinion of NASDAQ, even though the securities meet all enumerated criteria for initial or continued listing on NASDAQ. In all circumstances where the Listing Qualifications Department (as defined in Listing Rule 5805) exercises its authority under Listing Rule 5101, the Listing Qualifications Department shall issue a Staff Delisting Determination under Listing Rule 5810 (c)(1), and in all circumstances where an Adjudicatory Body (as defined in Listing Rule 5805) exercises such authority, the use of the authority shall be described in the written decision of the Adjudicatory Body.

Issue: The company was delisted by a Hearings Panel for public interest concerns. In January 2010, the company issued a press release announcing that it had entered into an agreement to purchase certain assets for approximately \$15 million. Over the following 18 months, the company provided updates regarding the status of the purportedly acquired assets in press releases and periodic filings with the Securities and Exchange Commission, discussing the progress of renovations, payment of deposits, and expected operational dates. In June 2011, the company hosted a conference call, during which the Chief Executive Officer disclosed for the first time that the acquisition had never been completed, and that the funds for the acquisition had been deposited into an account under the control of the CEO. The funds were subsequently invested in other assets. The company's Chief Accounting Officer explained that the decision to provide false information about the matter to the public was due to worry that the cancellation of the acquisition would provoke negative reactions in the market. The company did not refute the facts noted above, but argued that it should remain listed while its internal investigation continued so that all facts and findings could be presented to the Hearings Panel. The company argued that investors are adequately protected, since its stock is currently suspended from trading on NASDAQ.

In affirming the Staff's determination to delist the company, the Hearings Panel stated that the false public disclosures by the CEO and CAO regarding the acquisition and funds may not evidence an intent to defraud shareholders; however, such false disclosures demonstrate a lack of regard for basic principles of transparency and honesty, as well as for management's fiduciary responsibilities to shareholders. The Hearings Panel noted in its decision that it only serves to magnify the Hearings Panel's concerns that the CEO and CAO were able to hide their misconduct from the Board and the Chief Financial Officer, and for such an extended period of time. The Hearings Panel found the company's internal controls clearly inadequate, and noted concerns that additional reporting, disclosure and internal control management deficiencies may yet be uncovered. The Hearings Panel also noted that the facts as presented suggest that the Board is not equipped to manage the crisis this company faces. As evidence, the Hearings Panel cited the Board's failure to require management resignations, or at least restrict management access and activities during the investigation; its narrow mandate regarding the scope of the independent investigation; and its lack of engagement and oversight of accounting disclosures over the past 18 months, stating that all of such facts do not engender confidence that it can lead an investigation that can fully identify and remedy all control deficiencies within a reasonable period of time. To continue the listing, even subject to a suspension, in light of the admissions that have been made and the probability that the company will not file audited financial statements for an extended period of time would be inconsistent with NASDAQ rules and would serve to undermine the public's confidence in its regulatory integrity.

Determination: Affirmed. The Listing Council is concerned the company is unable to determine whether the CEO and CAO misappropriated funds after the failure of the transaction. When faced with evidence of misappropriation, the Board failed to act appropriately by, at a bare minimum, restricting management access and activities during the investigation. The Listing Council further concludes that the company made false and misleading disclosures concerning the acquisition in filings with the Securities and Exchange Commission. The Listing Council is particularly concerned about the company's admissions during the NASDAQ hearing process that it did not publicly disclose the failure of the acquisition because such disclosure could cause the company's stockholders to react negatively. This reasoning gets the principles of transparency and accurate public statements completely backwards.

The Listing Council finds no reason to allow the company to remain listed. It is clear from the record that the company is unprepared to meet the governance standards required by listed companies and that it is not fully equipped for the rigors of the regulatory environment within which exchange-listed companies must operate.

Pursuant to Listing Rule 5101, NASDAQ has "broad discretionary authority" over the listing of securities on NASDAQ, "in order to

maintain the quality of and public confidence in the market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to protect investors and the public interest.” This authority stems directly from NASDAQ’s delegated responsibilities under the Securities Exchange Act of 1934. The Listing Council strongly disagrees with the company’s assertion that investors are adequately protected, since its stock is currently suspended from trading on NASDAQ. The Listing Council also strongly disagrees with the company’s assertion that allowing the company to remain listed, yet suspended from trading, will balance the need to protect prospective investors and the integrity of NASDAQ with the need for fair treatment of the company and its shareholders. To the contrary, allowing the company to remain listed in light of the facts developed in this matter would signal to both current and prospective shareholders a level of comfort with the company that is simply not present. Sending such a signal would in no way serve to protect investors nor maintain the public confidence in the market. Accordingly, the Listing Council affirms the Panel decision to delist the company’s securities based on the exercise of the broad discretionary authority of Listing Rule 5101.

The Listing Council finds no reason to allow the company to remain listed. It is clear from the record that the company is unprepared to meet the governance standards required by listed companies and that it is not fully equipped for the rigors of the regulatory environment within which exchange-listed companies must operate.

Pursuant to Listing Rule 5101, NASDAQ has “broad discretionary authority” over the listing of securities on NASDAQ, “in order to maintain the quality of and public confidence in the market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to protect investors and the public interest.” This authority stems directly from NASDAQ’s delegated responsibilities under the Securities Exchange Act of 1934. The Listing Council strongly disagrees with the company’s assertion that investors are adequately protected, since its stock is currently suspended from trading on NASDAQ. The Listing Council also strongly disagrees with the company’s assertion that allowing the company to remain listed, yet suspended from trading, will balance the need to protect prospective investors and the integrity of NASDAQ with the need for fair treatment of the company and its shareholders. To the contrary, allowing the company to remain listed in light of the facts developed in this matter would signal to both current and prospective shareholders a level of comfort with the company that is simply not present. Sending such a signal would in no way serve to protect investors nor maintain the public confidence in the market. Accordingly, the Listing Council affirms the Panel decision to delist the company’s securities based on the exercise of the broad discretionary authority of Listing Rule 5101.

Publication Date*: 7/31/2012

Identification Number: 600

Listing Council Decision 2011-4

Identification
Number 601

Rule 5550(b): For continued listing of a Company’s Primary Equity Security on the Capital Market, a Company shall maintain: (1) Stockholders’ equity of at least \$2.5 million; (2) Market Value of Listed Securities of at least \$35 million; or (3) Net income from continuing operations of \$500,000 in the most recently completed fiscal year or in two of the three most recently completed fiscal years.

Issue: In November, 2010, the Hearings Panel placed the company on a one-year monitor pursuant to Listing Rule 5815(d)(4)(A), which obligated the company to proactively inform the Hearings Panel of potential non-compliance with continued listing requirements. The company had a record of non-compliance with the stockholders’ equity continued listing standard. In May 2011, the company filed its Form 10-Q for the quarter ended March 31, 2011, which evidenced that the company was no longer in compliance with NASDAQ’s stockholders’ equity requirement at the close of the quarter. The company had not informed the Hearings Panel of the deficiency at any point prior to the filing of the Form 10-Q. The Hearings Panel determined to delist the company for the stockholders’ equity deficiency and for violating Rule 5815(d)(4)(A) by not proactively informing the Hearings Panel of the deficiency. The company appealed the Hearings Panel decision to the Listing Council.

Determination: Remand. The Listing Council agrees with the Hearings Panel that the company should have been delisted based on the facts and circumstances before the Hearings Panel at the time of its determination. The company has been unable to maintain adequate stockholders’ equity over the past year, and has ignored the Hearings Panel’s direction to keep it proactively informed of potential non-compliance. Adding to the Listing Council’s concerns is the fact that the company has historically missed projected milestones.

Through its submissions to the Listing Council, the company has described some positive developments concerning the sale of assets and the potential acquisition of others. As result of closing a transaction for the sale of a company asset, the company now has stockholders’ equity in excess of continued listing requirements and, based on the pro forma burn rate projection provided by the company, it will continue to have stockholders’ equity in excess of the continued listing requirements for at least a full year.

The Listing Council continues to have concerns regarding the company’s ability to maintain compliance with NASDAQ’s listing standards, and is therefore directing the Hearings Panel to place the company under a Hearings Panel monitor for one year from the date of this decision. A Hearings Panel monitor will allow NASDAQ to quickly address any deficiencies that arise, while also allowing the

company's stock to trade as normal. The Listing Council stresses in the strongest terms that, while it is subject to the Hearings Panel monitor, the company has an obligation to promptly notify the Hearings Panel in the event its stockholders' equity falls below \$2.5 million and in the event the company falls out of compliance with any other applicable listing requirement. The Listing Council may not object to the Hearings Panel delisting the company based solely on non-compliance with this notice obligation. Accordingly, the Listing Council finds that the company has regained compliance with NASDAQ's continued listing requirements and remands this matter to the Hearings Panel for a one year monitor pursuant to Listing Rule 5815(d)(4)(A).

Publication Date*: 7/31/2012

Identification Number: 601

Listing Council Decision 2011-3

Identification
Number 602

Rule 5250(c)(1): A company shall timely file all required periodic financial reports with the Commission through the EDGAR System or with the Other Regulatory Authority. A company that does not file through the EDGAR System shall supply to NASDAQ two (2) copies of all reports required to be filed with the Other Regulatory Authority or email an electronic version of the report to NASDAQ at continuedlisting@nasdaqomx.com. All required reports must be filed with NASDAQ on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Rule 5101: NASDAQ is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. NASDAQ stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. NASDAQ Companies, from new public Companies to Companies of international stature, are publicly recognized as sharing these important objectives. NASDAQ, therefore, in addition to applying the enumerated criteria set forth in the Listing Rule 5000 Series, has broad discretionary authority over the initial and continued listing of securities in NASDAQ in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. NASDAQ may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on NASDAQ inadvisable or unwarranted in the opinion of NASDAQ, even though the securities meet all enumerated criteria for initial or continued listing on NASDAQ. In all circumstances where the Listing Qualifications Department (as defined in Listing Rule 5805) exercises its authority under Listing Rule 5101, the Listing Qualifications Department shall issue a Staff Delisting Determination under Listing Rule 5810(c)(1), and in all circumstances where an Adjudicatory Body (as defined in Listing Rule 5805) exercises such authority, the use of the authority shall be described in the written decision of the Adjudicatory Body.

Issue: The company was delisted by a Hearings Panel for public interest concerns, noting that the events that have occurred since the company's independent public audit firm raised serious concerns do not instill confidence that the company is fully equipped for the rigors of the regulatory environment within which exchange-listed companies must operate. The Hearings Panel stated that the implementation of a remedial cash control plan had been, at best, poorly executed, with only \$15 million of a purported \$170 million transferred into the control of the Audit Committee. The Hearings Panel also cited concerns surrounding management's leadership, noting the Acting CFO's obstruction of the plan's implementation by refusing to pay the advisors charged with its implementation and the CEO's willingness to rehire her after her resignation. The Hearings Panel concluded that the CEO and the Acting CFO are equally responsible for the obstruction of the investigation and failure to implement the cash control plan. The Hearings Panel also found that the Board special investigative committee's willingness to replace its counsel due to pressures apparently resulting from management's distaste for the cash control plan and investigation, suggests an insufficiently empowered special committee. The Hearings Panel also described its serious concerns regarding the company's disclosures regarding the recent events and the company's inability to respond to the Hearings Panel's questions regarding concerns that the company's major equipment supplier is a related party, which, in its opinion, showed that the company is unprepared to meet the governance standards required by listed companies. Last, the Hearings Panel noted that the audit issues facing the company implicate substantial accounting, operational, and control failures that are likely to require significant time to resolve.

Determination: Affirmed. After a review of the record in this matter, the Listing Council affirms the Hearings Panel Decision. The facts and circumstances of this matter show a company faced with very serious allegations of potential illegal acts, severe failure of management to act aggressively to address those allegations, and an insufficiently strong Board to effectively control and remediate management's failures timely. The independent investigation has been managed poorly at best, and clearly intentionally interfered with by management. The Listing Council takes very seriously the concerns of the audit firm surrounding the company's inability to confirm bank account balances, accounts payable balances, sales amounts, sales terms and outstanding balances, and undisclosed related party transactions, all of which ultimately led the audit firm to conclude that an illegal act has or may have occurred. Coupled with the company's failure to aggressively address these concerns and implement the audit firm's recommendations, the Listing Council finds no reason to allow the company to remain listed. The Listing Council agrees with the Hearings Panel's conclusion that the record shows the company is unprepared to meet the governance standards required by listed companies and that it is not fully equipped for the rigors

of the regulatory environment within which exchange-listed companies must operate.

Pursuant to Listing Rule 5101, NASDAQ has “broad discretionary authority” over the listing of securities on the Global Market “in order to maintain the quality of and public confidence in the market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to protect investors and the public interest.” This authority stems directly from NASDAQ’s delegated responsibilities under the Securities Exchange Act of 1934. The Listing Council disagrees with the company’s assertion that allowing the company to remain listed, albeit suspended from trading, will balance the need to protect prospective investors and the integrity of NASDAQ with the need for fair treatment of the company and its shareholders. To the contrary, allowing the company to remain listed in light of the facts developed in this matter would signal to both current and prospective shareholders a level of comfort with the company that is simply not present. Sending such a signal would in no way serve to protect investors nor maintain the public confidence in the market.

Accordingly, the Listing Council affirms the Panel decision to delist the company’s securities based on the exercise of the broad discretionary authority of Listing Rule 5101.

Publication Date*: 7/31/2012

Identification Number: 602

Listing Council Decision 2011-2

Identification
Number 603

Rule 5250(c)(1): A company shall timely file all required periodic financial reports with the Commission through the EDGAR System or with the Other Regulatory Authority. A company that does not file through the EDGAR System shall supply to NASDAQ two (2) copies of all reports required to be filed with the Other Regulatory Authority or email an electronic version of the report to NASDAQ at continuedlisting@nasdaqomx.com. All required reports must be filed with NASDAQ on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Rule 5101: NASDAQ is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. NASDAQ stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. NASDAQ Companies, from new public Companies to Companies of international stature, are publicly recognized as sharing these important objectives. NASDAQ, therefore, in addition to applying the enumerated criteria set forth in the Listing Rule 5000 Series, has broad discretionary authority over the initial and continued listing of securities in NASDAQ in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. NASDAQ may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on NASDAQ inadvisable or unwarranted in the opinion of NASDAQ, even though the securities meet all enumerated criteria for initial or continued listing on NASDAQ. In all circumstances where the Listing Qualifications Department (as defined in Listing Rule 5805) exercises its authority under Listing Rule 5101, the Listing Qualifications Department shall issue a Staff Delisting Determination under Listing Rule 5810 (c)(1), and in all circumstances where an Adjudicatory Body (as defined in Listing Rule 5805) exercises such authority, the use of the authority shall be described in the written decision of the Adjudicatory Body.

Issue: The company was delisted by a Hearings Panel for public interest concerns based on: the resignations of the company’s auditors, Chief Financial Officer, and an independent Board member and the reasons stated for those resignations; the serious questions raised by the reports of forensic accountants that go to core issues regarding the integrity of the company’s finances and operations; the lack of audited financials on file for 2010, uncertainty as to the reliability of prior years financials, and the multiple obstacles to prompt compliance with filing obligations; and, finally, the pattern of the company’s responses to requests from accountants and NASDAQ as this matter has unfolded.

Determination: Affirmed. After a review of the record in this matter, the Listing Council affirms the Panel Decision. As noted by the Panel, NASDAQ Listing Rule 5101 grants NASDAQ broad discretion to delist the securities of a company in order to maintain the quality of and public confidence in the market, prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and protect investors and the public interest. The bases noted by the Panel in its decision to delist the company fit squarely within the ambit of the rule. The serious allegations made against the company and its current management, supported by concerns noted by both its independent public auditor and independent investigator, together with the resignations of independent directors all support a determination to delist the company from NASDAQ. Furthermore, the Listing Council shares Staff’s concern regarding the feasibility of the company’s proposed timeline for compliance. The Listing Council notes that investigations concerning such serious allegations do not lend themselves to quick conclusion nor are the issues often identified easily resolved. Moreover, the Listing Council notes that the company has missed prior milestones it set for itself and has shown little demonstrable progress toward quick resolution of its deficiencies. Concerning to the Listing Council is that much of the delay in investigating and resolving the issues in this matter has been

caused by the company, and not due to issues beyond the company's control. As a self-regulatory organization, NASDAQ is charged with the protection of investors and the public interest. The Listing Council believes that allowing the company to remain listed on NASDAQ, whether halted or not, would be misleading to the investing public and signal a level of comfort with the company that is simply not present.

Accordingly, the Listing Council affirms the Panel decision to delist the company's securities based on the exercise of the broad discretionary authority of Listing Rule 5101.

Publication Date*: 7/31/2012

Identification Number: 603

Report of the NASDAQ Listing and Hearing Review Council on Corporate Governance

Identification
Number 1046

[Report of the NASDAQ Listing and Hearing Review Council on Corporate Governance \(June 2010\)](#)

Publication Date*: 7/31/2012

Identification Number: 1046

Listing Council Decision 2010-2

Identification
Number 605

Rule 5550(a)(2): For continued listing, the minimum bid price per share for common stock shall be at least \$1 per share.

Issue: The company was delisted by a Hearings Panel for failing to regain compliance with Listing Rule 5550(a)(2) after it was provided with the full extent of time available to do so by Staff and a Hearings Panel. The company appealed the Hearings Panel decision to the Listing Council.

Determination: Affirmed. The Hearings Panel was willing to grant the company an extension of time so that it could regain compliance with Listing Rule 5550(a)(2) because the company had committed to gaining shareholder approval of a stock split in a ratio sufficient to regain compliance with the rule. The company was unable to gain such approval in the time afforded. The Hearings Panel issued a second decision, which granted the company the full extent of time available under the rules contingent on the company gaining the required shareholder approval by a date sufficient for it to regain compliance with Listing Rule 5550(a)(2) prior to the expiration of the extension. The company failed to gain shareholder approval by the deadline, and the Hearings Panel issued a decision to delist the company's shares.

In affirming the Hearings Panel decisions, the Listing Council finds that granting the company extensions to regain compliance with the \$1 bid price requirement was reasonable and appropriate given the facts and circumstances presented by the record at the time the decisions were issued. In particular, it was reasonable for the Hearings Panel to rely on the company's statements and commitments. It is incumbent on a company to provide NASDAQ accurate statements and to make commitments based on well-considered and reasonable assumptions. In the present case, it is not clear that the company's failure to achieve the various commitments made to the Hearings Panel was due to a failure to consider all contingencies or was a result of unreasonable assumptions. In any event, the company failed to meet the most critical of those commitments, and the Listing Council finds no reason not to affirm the decision to delist the company's securities.

Publication Date*: 7/31/2012

Identification Number: 605

Listing Council Decision 2010-1

Identification
Number 606

Rule 5250(c)(1): A company shall timely file all required periodic financial reports with the Commission through the EDGAR System or with the Other Regulatory Authority. A company that does not file through the EDGAR System shall supply to NASDAQ two (2) copies of all reports required to be filed with the Other Regulatory Authority or email an electronic version of the report to NASDAQ at continuedlisting@nasdaqomx.com. All required reports must be filed with NASDAQ on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company was not able to file its delinquent periodic SEC reports due to an internal investigation of company practices relating to revenue recognition. The Panel granted the company an extension to file its delinquent reports, which was the full extent of the Panel's discretionary authority. At the expiration of the extension, the company had not regained compliance. As a consequence, the Panel issued a decision to suspend the company's securities. The company appealed the Panel decision to the Listing Council.

Determination: Affirmed. The Panel was willing to grant the company an extension of time because the company had demonstrated good faith efforts to regain compliance, and the Panel was not faced with any information particular to the company that would suggest that continued listing for a brief period would harm the investing public. In its July 20, 2009 decision, the Panel noted its concerns regarding the seriousness of the company's revenue recognition issues, the large amount of revenues to be moved to subsequent periods and the fact that the company had no current audited financial statements on file for a significant time period. Notwithstanding, however, the Panel determined to allow the company to remain listed while it worked to file its delinquent reports and regain compliance with NASDAQ's listing standards. In determining to grant the company an extension, the Panel noted that the company and its Audit Committee responded appropriately to indications of revenue recognition problems by undertaking a broad review of transactions dating back to 2004. Further, the Panel considered the company's representation that it had identified the problems that caused the revenue recognition issues; that the responsible individuals are no longer with the company; that those currently responsible are trained and knowledgeable about revenue recognition issues; and that current management is fully committed to a wide range of remedial measures to preclude a recurrence of the problem. Importantly, the company informed the Panel that it expected to complete its revenue restatement and regain compliance with the filing requirement by September 30, 2009, and by no later than October 31, 2009.

In affirming the Panel decisions, the Council finds that granting the company the full extent of time available under the Listing Rules was reasonable and appropriate given the facts and circumstances presented by the record at the time the decision was issued. Pursuant to Listing Rule 5815(c)(1)(F), the Panel may grant a company delinquent in filing its periodic reports an extension of up to 360 days from the due date of the first such late periodic report. The company did not regain compliance with the Listing Rules by the expiration of the Panel extension, and as such, the Panel's decision to suspend and delist the company's securities was also reasonable and appropriate at the time of issuance.

The Listing Council notes that the company, as of the date of the Listing Council's deliberations, had not regained compliance with the Listing Rules. The Listing Council has no authority under the Listing Rules to grant the company a further extension of time to regain compliance, if it were so inclined. Based on the foregoing, the Listing Council affirms the decisions of the Panel in this matter.

Publication Date*: 7/31/2012

Identification Number: 606

Listing Council Decision 2009-1

Identification
Number 607

Rule 5250(c)(1): A company shall timely file all required periodic financial reports with the Commission through the EDGAR System or with the Other Regulatory Authority. A company that does not file through the EDGAR System shall supply to NASDAQ two (2) copies of all reports required to be filed with the Other Regulatory Authority or email an electronic version of the report to NASDAQ at continuedlisting@nasdaq.com. All required reports must be filed with NASDAQ on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company was not able to file its delinquent periodic SEC reports due to an internal investigation of company practices relating to stock option grants to officers and directors, and related matters. The Panel granted the company an extension to file its delinquent reports, which was the full extent of the Panel's discretionary authority. The company appealed the Panel decision to the Listing Council, and by separate letter, the company requested that the Listing Council call for review the Panel decision with a stay of delisting. The Listing Council notified the company that it had called for review the Panel decision and issued a stay of delisting pending further Council action.

Determination: Affirmed. The decision of the Panel was appropriate at the time it was rendered. The Listing Council also exercised its discretionary authority to grant the company an additional extension of time to demonstrate compliance with the filing requirement, but not to the full extent of the Listing Council's discretion.

In reaching its determination, the Listing Council applied a facts and circumstances analysis, and found that based on its analysis, this company should be given additional time to become compliant with NASDAQ's filing requirement. The Listing Council considered many factors, including, but not limited to, the following:

- The company reacted quickly and took appropriate steps once the potential problem was identified. After the board of directors was informed of evidence indicating backdating issues, the board of directors appointed the Special Committee, which began an independent investigation, with the help of outside consultants, to determine the depth and breadth of the problem.
- The company cooperated with regulatory authorities and timely notified the investing public of its independent investigation and the need for a restatement of its financial statements.
- The company has agreed to adopt the remedial measures recommended by the Special Committee.

The Listing Council also considered that the company was not in any other distress and that, but for the options issue, the company was

ready to remedy its filing delinquency and, based upon historical financial information, appeared to have the financial strength to continue to meet the maintenance standards of the Global Market. The Listing Council understands that the Committee's investigation has been slowed by the magnitude of the problem and the company's dependence on outside factors to complete the process. The Listing Council was also particularly cognizant, and considered, that the Panel had exhausted its ability to provide the company with an additional extension of time.

While the Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information, when faced with similar cases historically, the Listing Council balanced its analysis with the extraordinary circumstances in which many companies found themselves. The Listing Council, however, believes that stock options backdating is not a novel issue at this point in time. As such, companies should have long ago taken appropriate action to determine whether their stock option grant practices are problematic, and to extent issues are found, restate any affected financial statements and remediate the issues, both expeditiously. Accordingly, the Listing Council is willing to grant a short extension of time pursuant to Listing Rule 5820(d)(4) to demonstrate compliance with NASDAQ's filing requirement; however, the Listing Council is unwilling to grant the company the full extent of time available to it under NASDAQ's rules.

The Listing Council also takes notice of the fact that the company has become deficient under Listing Rule 5620 because it did not solicit proxies for or hold its annual meeting by December 31, 2008. As such, the Listing Council finds that such failure to solicit proxies for and hold an annual meeting constitutes a new and separate deficiency. In order to assure that the company has an adequate opportunity to address this deficiency, the Listing Council remands this deficiency back to the Panel for further review and action if the company regains compliance with the filing requirement. Staff shall instruct the company to respond to the Panel with respect to this deficiency.

Publication Date*: 7/31/2012

Identification Number: 607

Listing Council Decision 2008-5

Identification
Number 608

Rule 4450(a)(3): A company must have a minimum of \$10,000,000 of stockholders' equity for continued listing on The NASDAQ Global Market.

Issue: The company was properly delisted because at the time of the Panel decision, the company reported stockholders' equity of \$2,792,000. The company argued that it should be allowed to transfer to The NASDAQ Capital Market, which has a stockholders' equity maintenance requirement of \$2,500,000. The Panel denied the company's request based on concerns regarding the company's ability to maintain compliance with the Capital Market continued listing standards. The Panel determined to delist the company's shares from The NASDAQ Global Market for failing to maintain stockholders' equity of at least \$10,000,000.

Determination: After a review of the record in this matter, the Listing Council affirms the Panel's decision to delist the company's securities. The company noted that it was pursuing multiple avenues by which it would be able to increase its stockholders' equity; however, none of the avenues were definitive in nature or sufficient to allow the Listing Council to conclude that the company would be able to regain compliance with the Global Market continued listing standards, or maintain compliance with the Capital Market continued listing standards going forward.

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company was not able to file its delinquent periodic SEC reports because it had encountered a number of corporate issues that had strained resources and diverted attention from filing. The Panel determined to delist the company's securities.

Determination: The company was properly delisted because at the time of the Panel decision the company was not current in all required public filings. The Listing Council notes that the company was current in filing its periodic reports at the time of the issuance of the Listing Council decision and the company believed it had remedied the issues that caused the company to become delinquent. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. Investors in securities listed on NASDAQ are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934.

Listing Council Decision 2008-4

Identification
Number 609

Rule 4450(b)(3): An issuer must have a market value of publicly held shares of \$15 million.

Issue: At the time of the Panel's decision, the company's market value of publicly held shares was below \$15 million. The company did not provide a plan of compliance.

Determination: The decision of the Panel to delist the company's securities was appropriate at the time it was rendered.

In reaching its determination, the Listing Council applied a facts and circumstances analysis. NASDAQ's Hearings process is designed to allow both NASDAQ-listed companies and prospective NASDAQ companies a means by which they can appeal a Staff determination.

For listed companies in jeopardy of delisting, the Hearings process affords these companies an automatic stay of delisting until a Panel issues a decision on the company's case. Companies are given the opportunity to provide a Panel with a written submission detailing the specific grounds for its contention that the Staff's determination was in error. In cases in which a company is deficient in NASDAQ's continued listing standards, the submission should also provide a definitive plan for achieving compliance with NASDAQ standards within the near term, as well as maintaining compliance long term.

In the instant case, the company provided neither the Panel nor the Listing Council with a definitive plan to regain compliance with NASDAQ's listing standards. Instead, the company provided a plan of merger. By its design, the plan of merger would not result in the company regaining compliance with the NASDAQ listing standards, but rather would result in the delisting of the company's shares upon the consummation of the merger. By the company's own admission, the Plan provided to the Panel was not a plan of compliance. The purpose of a plan of compliance is to provide the Panel and Listing Council with information sufficient to determine whether the deficient company has a reasonable chance to regain compliance with NASDAQ's listing standards within the time afforded to the adjudicator under NASDAQ rules. The Panel correctly concluded that the plan provided to it was not a compliance plan and insufficient to determine whether the company would regain compliance within the discretion available to the Panel.

Based on the foregoing, the Listing Council affirms the decision of the Panel to suspend the company's securities.

Listing Council Decision 2008-3

Identification
Number 622

Rule 4340(a): An issuer must apply for initial listing in connection with a transaction whereby the issuer combines with a non-NASDAQ entity, resulting in a change of control of the issuer and potentially allowing the non-NASDAQ entity to obtain a NASDAQ Listing. In determining whether a change of control has occurred, NASDAQ shall consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the issuer. NASDAQ shall also consider the nature of the businesses and the relative size of the NASDAQ issuer and non-NASDAQ entity. The issuer must submit an application for the post-transaction entity with sufficient time to allow NASDAQ to complete its review before the transaction is completed. If the issuer's application for initial listing has not been approved prior to consummation of the transaction, NASDAQ will issue a Staff Determination Letter as set forth in Listing Rule 4804 and begin delisting proceedings pursuant to the Listing Rule 4800 Series.

Issue: The Panel issued a decision that declined to determine whether Staff correctly concluded that the merger between a NASDAQ-listed company and a non-NASDAQ-listed company constituted a reverse merger for purposes of Listing Rule 4340(a). In issuing its decision, the Panel noted that the company had applied, and was approved, for initial listing.

Determination: The decision of the Panel was appropriate at the time it was rendered. The Listing Council also found that Staff's conclusion that the transaction was a reverse merger was correct.

The company argued that the merger was not a reverse merger, but rather a merger of equals whereby there was no change of control. As such, the company believed that it was not required to apply for initial listing on NASDAQ. In support of their position, the company noted that the two companies' businesses are similar and that the NASDAQ company was larger relative to the non-NASDAQ company both in staffing and manufacturing capabilities. The Listing Council notes, however, that similarity in business and relative size are but two factors Staff must consider and weigh in its reverse merger analysis. No one factor of all the factors to be considered by Staff in making its reverse merger determination is dispositive. Staff must make its determination considering the mix of factors required by the rule. Consistent with such an analysis, the Listing Council finds evidence supporting that a change of control had occurred based on

applying the various factors in the rule to the facts and circumstances of this case. Post-merger, the non-NASDAQ company's shareholders own 58% of the merged company's outstanding voting shares, non-NASDAQ company officers represent 66% of the merged company's officers, and although there is equal representation on the board of directors by both NASDAQ company- and non-NASDAQ company-affiliated directors, the chairman of merged company's board of directors is the former non-NASDAQ company's chairman. The Listing Council acknowledges that the company's chief executive officer and chief financial officer have retained these positions in the merged company; however, in the aggregate, the facts and circumstances lead the Listing Council to find that it was reasonable to determine that a change of control had occurred. Last, the Listing Council notes that a significant change in financial structure had occurred as evidenced by the fact that the non-NASDAQ company was treated as acquiring the NASDAQ company for accounting purposes.

Based on the foregoing, the Listing Council affirms the decision of the Panel.

Publication Date*: 7/31/2012

Identification Number: 622

Listing Council Decision 2008-2

Identification
Number 623

Rule 4350(i)(2): An exception applicable to a specified issuance of securities may be made upon prior written application to NASDAQ's Listing Qualifications when:

(A) the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise; and

(B) reliance by the company on this exception is expressly approved by the audit committee or a comparable body of the board of directors comprised solely of independent, disinterested directors. Listing Qualifications shall respond to each application for such an exception in writing.

A company that receives such an exception must mail to all shareholders not later than ten days before issuance of the securities a letter alerting them to its omission to seek the shareholder approval that would otherwise be required. Such notification shall disclose the terms of the transaction (including the number of shares of common stock that could be issued and the consideration received), the fact that the issuer is relying on a financial viability exception to the stockholder approval rules, and that the audit committee or a comparable body of the board of directors comprised solely of independent, disinterested directors has expressly approved reliance on the exception.

The issuer shall also make a public announcement through the news media disclosing the same information as promptly as possible, but no later than ten days before the issuance of the securities.

Issue: The Panel determined that Staff erred in denying the financial viability exception to the shareholder approval rules. The Panel found the Staff had applied a bright-line test that denies the financial viability exception based on any issuance that includes a discounted offering of stock to corporate officers.

Determination: After a review of the record in this matter, the Listing Council affirms the Panel's decision to continue the listing of the company's securities.

NASDAQ shareholder approval requirements are designed to provide shareholders with a meaningful voice in significant transactions and in transactions where they may face significant dilution. The Listing Council believes that this voice, mandated by NASDAQ rules, is a basic tenet of the NASDAQ corporate governance rules. In adopting these rules, however, NASDAQ also understood that there are special situations wherein companies are unable to seek prior shareholder approval to issue securities because any delay would jeopardize a company's ability to continue as a going concern.

After reviewing the record before it, the Listing Council agrees with the Panel's determination that the company's viability was threatened. The Listing Council also agrees with the Panel's determination that it can be fairly and reasonably implied that a discounted issuance of stock to management in a private placement, as contemplated in the present case, is considered "equity compensation" for purposes of Listing Rule 4350(i)(1)(A), and as such, requires prior shareholder approval absent an exception. The Listing Council finds that the Panel reasonably concluded that, based upon the record before it, the Staff had applied a "bright-line" test that would deny the availability of the financial viability exception for any issuance that includes an equity compensation component. The Listing Council agrees with the Panel that applying a "bright-line" test, which summarily excludes companies from access to the financial viability exception based upon the existence of equity compensation, is improper. Staff must consider the facts and circumstances surrounding each request for a financial viability exception.

In the case at hand, the Panel found convincing the company's belief that any effort to amend the terms of the financing in any way would have required the approval by multiple parties and raised a very high risk that the deal would fall through. The Panel was not convinced that the terms of the financing were intended to allow management to enrich itself or that any enrichment would occur without the

approval of shareholders. Instead, the Panel believed that the management participation in the financing, which was negotiated at the end of the process at the direction of the independent committee of the Board, was to some extent offset by other significant concessions.

Based on the foregoing, the Listing Council affirms the Panel decision to grant the company additional time to regain compliance with the Capital Market continued listing standards.

Publication Date*: 7/31/2012

Identification Number: 623

Listing Council Decision 2008-1

Identification
Number 624

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three(3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company was not able to file its delinquent periodic SEC reports due to the need for additional time for the company to complete an on-going investigation into financial irregularities at a company subsidiary. Based on a Panel decision, the company was scheduled to be suspended, pending delisting, by the Panel, because the Panel was at the limit of its discretionary authority. The Listing Council exercised its discretionary authority to call the Panel's decision for review and stay any future Panel determinations to suspend the company's securities from trading, pending further action by the Listing Council.

Determination: The decision of the Panel was appropriate at the time it was rendered. The Listing Council also uses its discretionary authority to grant the company an additional 60 day extension of time to demonstrate compliance with all Global Select Market continued listing requirements.

In reaching its determination, the Listing Council applied a facts and circumstances analysis, and found that based on its analysis, that this company should be given additional time to become compliant with NASDAQ's filing requirement.

The Listing Council considered many factors, including, but not limited to, the following:

- The company reacted quickly and took appropriate steps once the potential problem was identified, including initiating an independent investigation, hiring outside consultants to assist with the forensic analysis and to assist with bolstering the company's internal controls, and terminating five employees who were determined to be the architects and implementers of the wrongdoing.
- There is no suggestion of wrongdoing by the company or any of its senior management.
- The company promptly notified the investing public of its inability to file its delinquent filings.
- The company has cooperated with regulators and federal authorities.
- The company has implemented the remedial measures recommended by its consultants.

The Listing Council also considered that the company was not in any other distress and that, but for the accounting issue, the company was ready to remedy its filing delinquency and, based upon historical financial information, appeared to have the financial strength to continue to meet the maintenance standards of the Global Select Market. The Listing Council understands that the accounting analysis has been slowed by the magnitude and complexity of the problem, and the company's dependence on outside factors to complete the process. The Listing Council was also particularly cognizant, and considered, that the Panel had exhausted its ability to provide the company with an additional extension of time, and would have provided the company more time if available under the rules.

While the Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information, the Listing Council balanced its analysis with the extraordinary circumstances in which many companies find themselves. In making its determination, the Listing Council undertakes a facts and circumstances analysis in each case to determine if additional remedies are appropriate.

Based upon the record, the Listing Council recognized that the company has been pro-active in trying to regain its status as a good corporate citizen, and believed that such diligence should be rewarded with an extension of time to demonstrate compliance.

As such, pursuant Listing Rule 4802(b), the Listing Council finds that it is appropriate in this instance to exercise its discretionary authority and provide the company with a short extension of time to demonstrate compliance with Listing Rule 4310(c)(14).

Based on the foregoing, the Listing Council affirms the decision of the Panel to suspend the company's securities, and grants the company an exception of 60 days to file its delinquent periodic reports and restatements.

Publication Date*: 7/31/2012

Identification Number: 624

SEC Review of Action Taken by NASDAQ: Coherent, Inc.

Identification
Number 1043

[SEC Review of Action Taken by NASDAQ: Coherent, Inc. \(December 18, 2007\)](#)

Publication Date*: 7/31/2012

Identification Number: 1043

U.S. Court of Appeals: Fog Cutter Capital Group, Inc., Petitioner, v, Securities & Exchange Commission, Respondent

Identification
Number 1044

[U.S. Court of Appeals: Fog Cutter Capital Group, Inc., Petitioner, v, Securities & Exchange Commission, Respondent](#) (January 23, 2007)

Publication Date*: 7/31/2012

Identification Number: 1044

Listing Council Decision 2007-15

Identification
Number 625

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company was not able to file its delinquent periodic SEC reports due to the need for additional time for company management to complete the assessment of the effectiveness of its internal control over financial reporting as of December 31, 2006 in accordance with Section 404 of the Sarbanes-Oxley Act of 2002. Based on a Panel decision, the company was scheduled to be suspended, pending delisting, by the Panel, because the Panel was at the limit of its discretionary authority. The Listing Council exercised its discretionary authority to call the Panel's decision for review and stay any future Panel determinations to suspend the company's securities from trading, pending further action by the Listing Council.

Determination: The decision of the Panel was appropriate at the time it was rendered. The Listing Council also uses its discretionary authority to grant the company an additional 60 day extension of time to demonstrate compliance with all Global Market continued listing requirements. In reaching its determination, the Listing Council applied a facts and circumstances analysis, and found that based on its analysis, that this company should be given additional time to become compliant with NASDAQ's filing requirement.

The Listing Council considered many factors, including, but not limited to, the following:

- The company reacted quickly and took appropriate steps once the problem was identified.
- There is no suggestion of wrongdoing by the company or any of its senior management.
- The company promptly notified the investing public of its inability to file its Form 10-K for the fiscal year ended December 31, 2006, and kept the investing public informed of its financial results.
- The company has taken remedial action to bolster its internal control processes and to prevent the reoccurrence of events that led to the filing delinquencies.
- The company has filed its Form 10-K for the fiscal year ended December 31, 2006.

The Listing Council also considered that the company was not in any other distress, appeared positioned to promptly file its remaining delinquent reports and, based upon historical financial information, appeared to have the financial strength to continue to meet the maintenance standards of the Global Market. The Listing Council understands that the accounting analysis was, in part, slowed by issues at its former audit firm, who at the termination of the relationship did not have a disagreement on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure. The Listing Council was also particularly

cognizant, and considered, that the Panel had exhausted its ability to provide the company with an additional extension of time, and would have provided the company more time if available under the rules. While the Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information, the Listing Council balances its analysis with the facts and circumstances of each case before it. The Listing Council is sympathetic to the company in that the issues surrounding its filing delinquencies arise from technical accounting issues not related to its operations and that the delays in meeting the Panel's deadline were, in part, beyond the company's control. Notwithstanding the unforeseen delays, the Listing Council notes that the company has filed its Form 10-K for the fiscal year ended December 31, 2006, and anticipates filing the delinquent 2007 Forms 10-Q by mid-January. Based upon the record, the Listing Council recognized that the company has been pro-active in trying to regain its status as a good corporate citizen, and believed that such diligence should be rewarded with an extension of time to demonstrate compliance.

As such, pursuant Listing Rule 4802(b), the Listing Council finds that it is appropriate in this instance to exercise its discretionary authority and provide the company with a short extension of time to demonstrate compliance with Listing Rule 4310(c)(14). Based on the foregoing, the Listing Council affirms the decision of the Panel to suspend the company's securities, and grants the company an exception of 60 days to file its delinquent periodic reports and restatements.

Publication Date*: 7/31/2012

Identification Number: 625

Listing Council Decision 2007-14

Identification
Number 626

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Rule 4350(e): Each issuer listing common stock or voting preferred stock, and their equivalents, shall hold an annual meeting of shareholders no later than one year after the end of the issuer's fiscal year-end.

Rule 4350(g): Each issuer shall solicit proxies and provide proxy statements for all meetings of shareholders and shall provide copies of such proxy solicitation to NASDAQ.

Issue: The company was not able to file its delinquent periodic SEC reports due to an internal investigation of company practices relating to stock option grants to officers and directors, and related matters. Based on a Panel decision, the company was scheduled to be suspended, pending delisting, by the Panel, because the Panel was at the limit of its discretionary authority. The company appealed the Panel's decision, and the Listing Council exercised its discretionary authority to call the Panel's decision for review and stay any future Panel determinations to suspend the company's securities from trading, pending further action by the Listing Council. Determination: The decision of the Panel was appropriate at the time it was rendered. The Listing Council also uses its discretionary authority to grant the company an additional 60 day extension of time to demonstrate compliance with all Global Market continued listing requirements and remands the Listing Rule 4350(e) and 4350(g) deficiencies to the Panel. In reaching its determination, the Listing Council applied a facts and circumstances analysis, and found that based on its analysis, that this company should be given additional time to become compliant with NASDAQ's filing requirement.

The Listing Council considered many factors, including, but not limited to, the following:

- The company reacted quickly and initiated an inquiry into stock options issues of its own accord. After the board of directors was informed of evidence indicating backdating issues, the board of directors appointed an independent committee, which began an investigation, with the help of outside consultants, to determine the depth and breadth of the problem.
- The company timely notified the investing public of its independent investigation.
- The company adopted remedial measures and internal controls recommended by the committee.
- The company has been proactive in keeping investors informed by providing unaudited quarterly financial information.
- There was no evidence of intent to defraud by senior management at the company.

The Listing Council also considered that the company was not in any other distress and that, but for the options issue, the company was ready to remedy its filing delinquency and, based upon historical financial information, appeared to have the financial strength to continue to meet the maintenance standards of the Global Market. The Listing Council understands that the restatement process has been slowed by the magnitude of the problem and the company's dependence on outside factors to complete the process. The Listing Council was also particularly cognizant, and considered, that the Panel had exhausted its ability to provide the company with an additional extension of time, and would have provided the company more time if available under the rules.

While the Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information, the Listing Council balanced its analysis with the extraordinary circumstances in which many companies find themselves. The Listing Council is sympathetic to the company in that it is not the only company that is currently ensnared in the thorny issues surrounding the potential restatement of financial statements as a result of the accounting for stock option grants. The Listing Council has considered the extraordinary circumstances that many companies find themselves in and will undertake a facts and circumstances analysis in each case to determine if additional remedies are appropriate. Based upon the record, the Listing Council recognized that the company has been pro-active in trying to regain its status as a good corporate citizen, and believed that such diligence should be rewarded with an extension of time to demonstrate compliance. As such, pursuant Listing Rule 4802(b), the Listing Council finds that it is appropriate in this instance to exercise its discretionary authority and provide the company with a short extension of time to demonstrate compliance with Listing Rule 4310(c)(14). Based on the foregoing, the Listing Council affirms the decision of the Panel to suspend the company's securities, and grants the company an exception of 60 days to file its delinquent periodic reports and restatements.

The Listing Council also takes notice of the fact that the company has become deficient under Rules 4350(e) and 4350(g) because it did not solicit proxies for or hold its annual meeting by no later than one year after the end of the company's fiscal year-end. As such, the Listing Council finds that such failure to solicit proxies for and hold an annual meeting constitutes new and separate deficiencies. In order to assure that the company has an adequate opportunity to address these deficiencies, the Listing Council remands these deficiencies back to the Panel for further review and action if the company regains compliance with the filing requirement. Staff shall instruct the company to respond to the Panel with respect to these deficiencies.

Publication Date*: 7/31/2012

Identification Number: 626

Listing Council Decision 2007-13

Identification
Number 627

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company was not able to file its delinquent periodic SEC reports due to the need for further analysis to support recognition of revenue from maintenance and support services provided as part of multiple element arrangements with respect to a business line. Based on a Panel decision, the company was scheduled to be suspended, pending delisting, by the Panel, because the Panel was at the limit of its discretionary authority. The Listing Council exercised its discretionary authority to call the Panel's decision for review and stay any future Panel determinations to suspend the company's securities from trading, pending further action by the Listing Council.

Determination: The decision of the Panel was appropriate at the time it was rendered. The Listing Council also uses its discretionary authority to grant the company an additional 60 day extension of time to demonstrate compliance with all Global Select Market continued listing requirements. In reaching its determination, the Listing Council applied a facts and circumstances analysis, and found that based on its analysis, that this company should be given additional time to become compliant with NASDAQ's filing requirement.

The Listing Council considered many factors, including, but not limited to, the following:

- The company reacted quickly and took appropriate steps once the potential problem was identified, including hiring an outside consultant to assist with the accounting analysis.
- There is no suggestion of wrongdoing by the company or any of its senior management.
- The company promptly notified the investing public of its inability to file its Form 20-F for the fiscal year ended March 31, 2006. Also, the company informed the investing public of its financial results as computed under non-US GAAP.
- The company has adopted a number of remedial measures, including measures designed to enhance expertise in US GAAP within the company and to address weaknesses in internal controls.

The Listing Council also considered that the company was not in any other distress and that, but for the accounting issue, the company was ready to remedy its filing delinquency and, based upon historical financial information, appeared to have the financial strength to continue to meet the maintenance standards of the Global Select Market. The Listing Council understands that the accounting analysis has been slowed by the magnitude of the problem and the company's dependence on outside factors to complete the process. The Listing Council was also particularly cognizant, and considered, that the Panel had exhausted its ability to provide the company with an additional extension of time, and would have provided the company more time if available under the rules. While the Listing Council takes

seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information, the Listing Council balanced its analysis with the extraordinary circumstances in which many companies find themselves. The Listing Council is sympathetic to the company in that it is not the only company that is currently ensnared in the thorny issues surrounding its historical accounting policies. In making its determination, the Listing Council also considered the extraordinary circumstances that many companies find themselves in and will undertake a facts and circumstances analysis in each case to determine if additional remedies are appropriate. Based upon the record, the Listing Council recognized that the company has been proactive in trying to regain its status as a good corporate citizen, and believed that such diligence should be rewarded with an extension of time to demonstrate compliance.

As such, pursuant Listing Rule 4802(b), the Listing Council finds that it is appropriate in this instance to exercise its discretionary authority and provide the company with a short extension of time to demonstrate compliance with Listing Rule 4310(c)(14). Based on the foregoing, the Listing Council affirms the decision of the Panel to suspend the company's securities, and grants the company an exception of 60 days to file its delinquent periodic reports and restatements.

Publication Date*: 7/31/2012

Identification Number: 627

Listing Council Decision 2007-12

Identification
Number 628

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company was not able to file its delinquent periodic SEC reports due to an internal investigation of company practices relating to stock option grants to officers and directors, and related matters. Based on a Panel decision, the company was scheduled to be suspended, pending delisting, by the Panel, because the Panel was at the limit of its discretionary authority. The Listing Council exercised its discretionary authority to call the Panel's decision for review and stay any future Panel determinations to suspend the company's securities from trading, pending further action by the Listing Council.

Determination: The decision of the Panel was appropriate at the time it was rendered. The Listing Council also uses its discretionary authority to grant the company an additional 60 day extension of time to demonstrate compliance with all Global Market continued listing requirements. In reaching its determination, the Listing Council applied a facts and circumstances analysis, and found that based on its analysis, that this company should be given additional time to become compliant with NASDAQ's filing requirement.

The Listing Council considered many factors, including, but not limited to, the following:

- The company reacted quickly and took appropriate steps once the potential problem was identified. Once the potential stock option problem was identified, management of the company began an internal review. After the Board was informed of evidence indicating backdating issues, the Board retained outside counsel, which began an independent investigation to determine the depth and breadth of the problem.
- The company co-operated with regulatory authorities and timely notified the investing public of its independent investigation.
- Upon the conclusion of the independent investigation, the company promptly notified the investing public of its need to restate its financial statements and cautioned investors not to rely on previously filed financial information.
- The company has either adopted, or committed to adopt, a range of remedial measures recommended by the independent investigation committee, including reformation of tainted stock option agreements and changes to procedures for options grants.
- The company has been proactive in keeping investors informed by providing unaudited financial information.

The Listing Council also considered that the company was not in any other distress and that, but for the options issue, the company was ready to remedy its filing delinquency and, based upon historical financial information, appeared to have the financial strength to continue to meet the maintenance standards of the Global Market. The Listing Council understands that the restatement process has been slowed by the magnitude of the problem and the company's dependence on outside factors to complete the process. The Listing Council was also particularly cognizant, and considered, that the Panel had exhausted its ability to provide the company with an additional extension of time, and would have provided the company more time if available under the rules.

While the Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information, the Listing Council balanced its analysis with the extraordinary circumstances in which many companies find themselves. The Listing Council is sympathetic to the company in that it is not the only company that is currently

ensnared in the thorny issues surrounding the potential restatement of financial statements as a result of the accounting for stock option grants. The Listing Council has considered the extraordinary circumstances that many companies find themselves in and will undertake a facts and circumstances analysis in each case to determine if additional remedies are appropriate.

Based upon the record, the Listing Council recognized that the company has been pro-active in trying to regain its status as a good corporate citizen, and believed that such diligence should be rewarded with an extension of time to demonstrate compliance. As such, pursuant Listing Rule 4802(b), the Listing Council finds that it is appropriate in this instance to exercise its discretionary authority and provide the company with a short extension of time to demonstrate compliance with Listing Rule 4310(c)(14). Based on the foregoing, the Listing Council affirms the decision of the Panel to suspend the company's securities, and grants the company an exception of 60 days to file its delinquent periodic reports and restatements.

Publication Date*: 7/31/2012

Identification Number: 628

Listing Council Decision 2007-11

Identification
Number 629

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Rule 4350(e): Each issuer listing common stock or voting preferred stock, and their equivalents, shall hold an annual meeting of shareholders no later than one year after the end of the issuer's fiscal year-end.

Rule 4350(g): Each issuer shall solicit proxies and provide proxy statements for all meetings of shareholders and shall provide copies of such proxy solicitation to NASDAQ.

Issue: The company was not able to file its delinquent periodic SEC reports due to an internal investigation of company practices relating to stock option grants to officers and directors, and related matters. Based on a Panel decision, the company was scheduled to be suspended, pending delisting, by the Panel, because the Panel was at the limit of its discretionary authority. The Listing Council exercised its discretionary authority to call the Panel's decision for review and stay any future Panel determinations to suspend the company's securities from trading, pending further action by the Listing Council.

Determination: The decision of the Panel was appropriate at the time it was rendered. The Listing Council also uses its discretionary authority to grant the company an additional 60 day extension of time to demonstrate compliance with all Global Market continued listing requirements and remands the Listing Rule 4350(e) and (g) deficiencies to the Panel.

In reaching its determination, the Listing Council applied a facts and circumstances analysis, and found that based on its analysis, that this company should be given additional time to become compliant with NASDAQ's filing requirement.

The Listing Council considered many factors, including, but not limited to, the following:

- The company reacted quickly and took appropriate steps once the potential problem was identified. After the board of directors was informed of evidence indicating backdating issues, the board of directors appointed a committee of independent directors, which began an investigation, with the help of outside consultants, to determine the depth and breadth of the problem.
- The company co-operated with regulatory authorities and timely notified the investing public of its independent investigation.
- Upon the conclusion of the independent investigation, the company promptly notified the investing public of its need to restate its financial statements and cautioned investors not to rely on previously filed financial information.
- The company has either adopted, or committed to adopt, a range of remedial measures recommended by the independent committee, including changes to procedures for options grants.
- The company has been proactive in keeping investors informed by providing unaudited quarterly and year end financial information.
- Certain officers involved in the backdating have resigned from the company.

The Listing Council also considered that the company was not in any other distress and that, but for the options issue, the company was ready to remedy its filing delinquency and, based upon historical financial information, appeared to have the financial strength to continue to meet the maintenance standards of the Global Market. The Listing Council understands that the restatement process has been slowed by the magnitude of the problem and the company's dependence on outside factors to complete the process. The Listing Council was also particularly cognizant, and considered, that the Panel had exhausted its ability to provide the company with an additional extension of time, and would have provided the company more time if available under the rules.

While the Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information, the Listing Council balanced its analysis with the extraordinary circumstances in which many companies find themselves. The Listing Council is sympathetic to the company in that it is not the only company that is currently ensnared in the thorny issues surrounding the potential restatement of financial statements as a result of the accounting for stock option grants. The Listing Council has considered the extraordinary circumstances that many companies find themselves in and will undertake a facts and circumstances analysis in each case to determine if additional remedies are appropriate.

Based upon the record before it, the Listing Council finds no reason not to conclude that the company has been pro-active in trying to regain its status as a good corporate citizen, thereby warranting an extension of time to demonstrate compliance. As such, pursuant to Rule 4802(b), the Listing Council finds that it is appropriate in this instance to exercise its discretionary authority and provide the company with a short extension of time to demonstrate compliance with Listing Rule 4310(c)(14). Based on the foregoing, the Listing Council affirms the decision of the Panel to suspend the company's securities, and grants the company an exception of 60 days to file its delinquent periodic reports and restatements. The Listing Council also takes notice of the fact that the company has become deficient under Rules 4350(e) and 4350(g) because it has not yet solicited proxies for or held its annual meeting. The Listing Council finds that such failure to solicit proxies for and hold an annual meeting constitutes new and separate deficiencies. In order to assure that the company has an adequate opportunity to address these deficiencies, the Listing Council remands these deficiencies back to the Panel for further review and action if the company regains compliance with the filing requirement. Staff shall instruct the company to respond to the Panel with regard to this deficiency.

Publication Date*: 7/31/2012

Identification Number: 629

Listing Council Decision 2007-10

Identification
Number 630

Rule 4450(b)(1): For continued listing on The NASDAQ Global Market, an issuer must demonstrate either: (A) a market value of listed securities of \$50 million; or (B) total assets and total revenue of \$50 million each for the most recently completed fiscal year or two of the last three most recently completed fiscal years.

Rule 4350(i)(1)(D)(i): Requires shareholder approval in connection with a transaction other than a public offering involving the sale, issuance or potential issuance by the issuer of common stock (or securities convertible into or exercisable for common stock) at a price less than the greater of book or market value which together with sales by officers, directors or substantial shareholders of the company equals 20% or more of common stock or 20% or more of the voting power outstanding before the issuance.

Issues: At the time of the Panel's decision, the company did not meet the market value of listed securities/total assets and total revenue requirement for continued listing on The NASDAQ Global Market. In addition, the company violated NASDAQ's shareholder approval rules by entering into transactions designed to positively impact the company's market value of listed securities shortfall. As a result, the Panel transferred the company's securities to The NASDAQ Capital Market, granted the company a short extension to cure the shareholder approval rule violation by gaining shareholder approval for the transactions, and issued a letter of reprimand to the company for the shareholder approval rule violation. The company appealed and requested to be allowed to relist on The NASDAQ Global Market under the less stringent continued listing requirements, and not the more stringent initial listing standards.

Determination: The Listing Council affirms the Panel's decision and denies the company's request for an exception to The NASDAQ Global Market continued listing standards. In reaching its determination, the Listing Council applied a facts and circumstances analysis. Based upon its analysis, the Listing Council found that the Panel properly determined that the company did not comply with all of the requirements for continued listing on the Global Market and as a consequence should be delisted from The NASDAQ Global Market. The Listing Council notes that the initial inclusion requirements are the appropriate standards to apply when a company has been delisted from a NASDAQ market. In determining whether to grant an exception to the initial listing requirements, the Listing Council considered, among other things, the company's behavior before being delisted.

The Listing Council notes that Staff was concerned that the transaction originally contemplated to enable the company to regain compliance with Listing Rule 4450(b)(1) would require shareholder approval, based on the limited information available to Staff at the time. As such, the company was put on notice of staff's concerns when it received the staff's Hearing Memo. The Listing Council further notes that the issue of whether shareholder approval was necessary, as a result of the aggregation of the two offerings subsequently contemplated by the company, was raised at the Panel Hearing, and the company stated that it would consult with staff. There is no evidence in the record that the company was proactive in consulting Staff on either occasion. Thereafter, the company completed the offerings and, as a consequence, violated the shareholder approval rules. It was only after staff's notice of violation of the shareholder approval rules that the company contacted staff. The Panel concluded that the company's violation of the shareholder approval rule was the result of insufficient attention to its obligations under the rules. The Listing Council also notes that the amount raised through the transactions was less than discussed at the Panel Hearing, and the company did not provide the Panel with a calculation of the

transaction's impact on market capitalization or projections of continued compliance.

After an examination of the facts and circumstances surrounding this case, the Listing Council denies the company's request for an exception to list on The NASDAQ Global Market and finds the Panel's decision to allow the company the opportunity to list on The NASDAQ Capital Market was appropriate at the time it was rendered. Based on the foregoing, the Listing Council affirms the Panel's decision to transfer the listing of the company's securities from The NASDAQ Global Market to The NASDAQ Capital Market.

Publication Date*: 7/31/2012

Identification Number: 630

Listing Council Decision 2007-9

Identification
Number 631

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Rule 4350(e): Each issuer listing common stock or voting preferred stock, and their equivalents, shall hold an annual meeting of shareholders no later than one year after the end of the issuer's fiscal year-end.

Rule 4350(g): Each issuer shall solicit proxies and provide proxy statements for all meetings of shareholders and shall provide copies of such proxy solicitation to NASDAQ.

Issue: The company was not able to file its delinquent periodic SEC reports due to an independent investigation of company practices relating to stock option grants to officers and directors, and related matters. Based on a Panel decision, the company was scheduled to be suspended, pending delisting, by the Panel, because the Panel was at the limit of its discretionary authority. The Listing Council exercised its discretionary authority to call the Panel's decision for review and stay any future Panel determinations to suspend the company's securities from trading, pending further action by the Listing Council.

Determination: The decision of the Panel was appropriate at the time it was rendered. The Listing Council also uses its discretionary authority to grant the company an additional 60 day extension of time to demonstrate compliance with all Global Market continued listing requirements and remands the Listing Rule 4350(e) and (g) deficiencies to the Panel.

In reaching its determination, the Listing Council applied a facts and circumstances analysis, and found that based on its analysis, that this company should be given additional time to become compliant with NASDAQ's filing requirement.

The Listing Council considered many factors, including, but not limited to, the following:

- The company reacted quickly and took appropriate steps once the potential problem was identified. Once the potential stock option problem was identified, management of the company began an internal review. After the Board was informed of evidence indicating backdating issues, the Audit Committee began an independent investigation, with the help of outside consultants, to determine the depth and breadth of the problem.
- The company co-operated with regulatory authorities and timely notified the investing public of its independent investigation.
- Upon the conclusion of the independent investigation, the company promptly notified the investing public of its need to restate its financial statement and cautioned investors not to rely on previously filed financial information.
- The company expanded the number of directors from six to eight and then appointed two new independent directors.
- The company has either adopted, or committed to adopt, all other remedial measures recommended by the Audit Committee.
- The company continues to issue on a timely basis all required Forms 8-K and 12b-25 and has been proactive in keeping investors informed by providing unaudited quarterly and year end financial information.

The Listing Council also considered that the company was not in any other distress and that, but for the options issue, the company was ready to remedy its filing delinquency and, based upon historical financial information, appeared to have the financial strength to continue to meet the maintenance standards of The NASDAQ Stock Market. The Listing Council understands that the restatement process has been slowed by the magnitude of the problem and the company's dependence on outside factors to complete the process. The Listing Council was also particularly cognizant, and considered, that the Panel had exhausted its ability to provide the company with an additional extension of time, and would have provided the company more time if available under the rules.

While the Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information, the Listing Council balanced its analysis with the extraordinary circumstances in which

many companies find themselves. The Listing Council is sympathetic to the company in that it is not the only company that is currently ensnared in the thorny issues surrounding the potential restatement of financial statements as a result of the accounting for stock option grants. The Listing Council has considered the extraordinary circumstances that many companies find themselves in and will undertake a facts and circumstances analysis in each case to determine if additional remedies are appropriate. Based upon the record, the Listing Council recognized that the company has been pro-active in trying to regain its status as a good corporate citizen, and believed that such diligence should be rewarded with an extension of time to demonstrate compliance.

As such, pursuant Listing Rule 4802(b), the Listing Council finds that it is appropriate in this instance to exercise its discretionary authority and provide the company with a short extension of time to demonstrate compliance with Listing Rule 4310(c)(14). Based on the foregoing, the Listing Council affirms the decision of the Panel to suspend the company's securities, and grants the company an exception of 60 days to file its delinquent periodic reports and restatements. The Listing Council also takes notice of the fact that the company has become deficient under Rules 4350(e) and 4350(g) because it did not solicit proxies for or hold its annual meeting by no later than one year after the end of the company's fiscal year-end. As such, the Listing Council finds that such failure to solicit proxies for and hold an annual meeting constitutes new and separate deficiencies. In order to assure that the company has an adequate opportunity to address these deficiencies, the Listing Council remands these deficiencies back to the Panel for further review and action if the company regains compliance with the filing requirement. Staff shall instruct the company to respond to the Panel with respect to these deficiencies.

(Note: The NASDAQ board of directors called the Listing Council decision for review and issued a stay of delisting; however, the board of directors withdrew its call for review and stay, subsequently noting that the company had been non-compliant with NASDAQ Rule 4310(c)(14) for a period of one year from the final due date of its annual report on Form 10-K.).

Publication Date*: 7/31/2012

Identification Number: 631

Listing Council Decision 2007-8

Identification
Number 632

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Securities and Exchange Commission ("Commission"). This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company was not able to file its delinquent periodic SEC reports due to an internal investigation of company practices relating to stock option grants. Being at the limit of its discretionary authority, the Panel determined to suspend, pending delisting, the company's securities for failure to file its delinquent periodic reports. Subsequently, the Listing Council exercised its discretionary authority to call for review an earlier decision of the Panel in this matter and stay the suspension.

Determination: The decision of the Panel was appropriate at the time it was rendered. The Listing Council also used its discretionary authority to grant the company an additional 60 day extension of time to demonstrate compliance with all Global Market continued listing requirements. In reaching its determination, the Listing Council applied a facts and circumstances analysis, and found that based on its analysis, that this company should be given additional time to become compliant with NASDAQ's filing requirement.

The Listing Council considered many factors, including, but not limited to, the following:

- The company reacted quickly and took appropriate steps once the potential stock option problem was identified. The management of the company began an internal review. After the Board was informed of evidence indicating backdating issues, the Audit Committee and later a Special Committee, began an independent investigation, with the help of outside consultants, to determine the depth and breadth of the problem.
- The company co-operated with regulatory authorities and timely notified the investing public of its independent investigation.
- After the investigation was concluded, the company took steps to remove the culpable individuals; to that end, the company's former CEO, CFO and Treasurer were all asked to resign from their respective positions.
- The company added two new independent board members to provide additional expertise.
- The company adopted all other remedial measures recommended by the Special Committee.
- Upon the conclusion of the independent investigation, the company promptly notified the investing public of its need to restate its financial statement and cautioned investors not to rely on previously filed financial information.

The Listing Council also considered that the company was not in any other distress and that, but for the options issue, the company was ready to remedy its filing delinquency and, based upon historical financial information, appeared to have the financial strength to continue

to meet the maintenance standards of the Global Market. The Listing Council understands that the restatement process has been slowed by the magnitude of the problem and the company's dependence on outside factors to complete the process. The Listing Council was also particularly cognizant, and considered, that the Panel had exhausted its ability to provide the company with an additional extension of time, and would have provided the company more time if available under the rules.

While the Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information, the Listing Council balanced its analysis with the extraordinary circumstances in which many companies find themselves. The Listing Council is sympathetic to the company in that it is not the only company that is currently ensnared in the thorny issues surrounding the potential restatement of financial statements as a result of the accounting for stock option grants. In making its determination, the Listing Council also considered the extraordinary circumstances that many companies find themselves in and will undertake a facts and circumstances analysis in each case to determine if additional remedies are appropriate. Based upon the record, the Listing Council recognized that the company has been pro-active in trying to regain its status as a good corporate citizen, and believed that such diligence should be rewarded with an extension of time to demonstrate compliance. As such, pursuant Listing Rule 4802(b), the Listing Council finds that it is appropriate in this instance to exercise its discretionary authority and provide the company with a short extension of time to demonstrate compliance with Listing Rule 4310(c)(14).

Based on the foregoing, the Listing Council affirms the decision of the Panel to suspend the company's securities, and grants the company an exception of 60 days to file its delinquent periodic reports and restatements.

Publication Date*: 7/31/2012

Identification Number: 632

Listing Council Decision 2007-7

Identification
Number 633

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Securities and Exchange Commission ("Commission"). This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company was not able to file its delinquent periodic SEC reports due to an internal investigation of company practices relating to stock option grants to officers and directors, and related matters. Being at the limit of its discretionary authority, the Panel determined to suspend, pending delisting, the company's securities for failure to file its delinquent periodic reports. Subsequently, the Listing Council exercised its discretionary authority to call the decision for review and stay the suspension.

Determination: The decision of the Panel was appropriate at the time it was rendered. The Listing Council also used its discretionary authority to grant the company an additional 60 day extension of time to demonstrate compliance with all Global Market continued listing requirements. In reaching its determination, the Listing Council applied a facts and circumstances analysis, and found that based on its analysis, that this company should be given additional time to become compliant with NASDAQ's filing requirement.

The Listing Council considered many factors, including, but not limited to, the following:

- The company reacted quickly and took appropriate steps once the potential stock option problem was identified. The management of the company began an internal review. After the Board was informed of evidence indicating backdating issues, the Audit Committee and later a Special Committee, began an independent investigation, with the help of outside consultants, to determine the depth and breadth of the problem.
- The company co-operated with regulatory authorities and timely notified the investing public of its independent investigation.
- Upon the conclusion of the independent investigation, the company promptly notified the investing public of its need to restate its financial statement and cautioned investors not to rely on previously filed financial information.
- After the investigation was concluded, the company took steps to remove the culpable individuals; to that end, the company's former CFO and Chief Accounting Officer were asked to resign from their respective positions, and have been replaced.
- The company added two new independent board members to provide additional expertise and reconstituted its compensation committee.
- The company has either adopted, or committed to adopt, all other remedial measures recommended by the Special Committee.
- The company has been proactive in keeping investors informed by providing unaudited quarterly and year end financial information and holding investor calls covering earnings.

The Listing Council also considered that the company was not in any other distress and that, but for the options issue, the company was ready to remedy its filing delinquency and, based upon historical financial information, appeared to have the financial strength to continue

to meet the maintenance standards of the Global Market. The Listing Council understands that the restatement process has been slowed by the magnitude of the problem and the company's dependence on outside factors to complete the process. The Listing Council was also particularly cognizant, and considered, that the Panel had exhausted its ability to provide the company with an additional extension of time, and would have provided the company more time if available under the rules. While the Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information, the Listing Council balanced its analysis with the extraordinary circumstances in which many companies find themselves. The Listing Council is sympathetic to the company in that it is not the only company that is currently ensnared in the thorny issues surrounding the potential restatement of financial statements as a result of the accounting for stock option grants. The Listing Council has considered the extraordinary circumstances that many companies find themselves in and will undertake a facts and circumstances analysis in each case to determine if additional remedies are appropriate.

Based upon the record, the Listing Council recognized that the company has been pro-active in trying to regain its status as a good corporate citizen, and believed that such diligence should be rewarded with an extension of time to demonstrate compliance. As such, pursuant Listing Rule 4802(b), the Listing Council finds that it is appropriate in this instance to exercise its discretionary authority and provide the company with a short extension of time to demonstrate compliance with Listing Rule 4310(c)(14). Based on the foregoing, the Listing Council affirms the decision of the Panel to suspend the company's securities, and grants the company an exception of 60 days to file its delinquent periodic reports and restatements.

Publication Date*: 7/31/2012

Identification Number: 633

Listing Council Decision 2007-6

Identification
Number 634

Rule 4450(a)(3): To continue its listing on the NASDAQ Global Market, the issuer must maintain stockholders' equity of at least \$10 million.

Issue: The company reported a stockholders' equity (deficit) of (\$5,148,000) at December 31, 2005. Furthermore, the company's plan to increase its stockholders' equity was not sufficiently definitive at the time of the Panel or Listing Council's decisions.

Determination: The company was properly suspended, pending delisting because it had violated the \$10,000,000 minimum stockholders' equity requirement, as set forth in Listing Rule 4450(a)(3), and its plan to regain compliance was not sufficiently definitive. The Listing Council finds that the Panel appropriately delisted the company's securities from the Global Market because at the time of the Panel decision, the company reported stockholders' equity (deficit) of (\$5,148,000). Furthermore, the company's plan to increase its stockholders' equity was not sufficiently definitive at the time of the Panel decision. The Listing Council noted that the company has been deficient with the stockholders' equity requirement for more than twelve months, was not in compliance as of the date of these deliberations, and has not provided any definitive documentation regarding potential increases of equity which could be accomplished in the short-term.

Although the company has argued that the trial against the U.S. for the taking of the business of its subsidiary has been completed, the company has not provided any evidence of: (i) a decision in favor of the company, (ii) the amount of any potential award, or (iii) a timetable as to when any potential award would be paid. With regards to the company's alternative plan of compliance, the settlement of real estate claims, again, there is no public information that supports a settlement has been reached. Absent, information that a settlement had been reached with a sum certain, the Listing Council cannot provide the company with relief. Even if the company was successful in its settlement and was able to reverse the \$8,000,000 in charges, the company would still not be able to demonstrate compliance with the \$10,000,000 stockholders' equity requirement.

The Listing Council finds that there is too little information to assume that the two alternatives presented by the company would in fact be completed in a timely manner, if at all. Given that the settlement alone is insufficient for the company to be able to demonstrate compliance, the Listing Council is not willing to provide the relief that the company is requesting.

The Listing Council also considered, and was: (i) concerned about by the company's argument at the Panel level that its generally accepted accounting principles based historical financial statements were prepared on conservative basis, and (ii) concerned about the recent resignation of the company's independent auditors. As such, the Listing Council affirms the Panel's decision to suspend and delist the company's securities because it has not demonstrated the ability to regain compliance in the near term or maintain compliance over the long term with stockholders' requirement as set forth in Listing Rule 4450(a)(3), and has not presented a definitive plan that will allow it to regain compliance with this requirement in the near term or maintain compliance over the long term.

Publication Date*: 7/31/2012

Identification Number: 634

Listing Council Decision 2007-4

Identification
Number 636

Rule 4310(c)(2)(B): For continued inclusion on The NASDAQ Capital Market, the issuer shall maintain:

(i) stockholders' equity of \$2,500,000; (ii) market value of listed securities of \$35,000,000; or (iii) net income from continuing operations of \$500,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

Issue: At the time of the Panel's decision, the company did not meet the minimum stockholders' equity requirement or its alternatives. The company argued that it would demonstrate in excess of \$2,500,000 in stockholders' equity when it filed its Form 10-K for the fiscal year ended June 30, 2006. When the Form 10-K was filed late, without an auditors opinion, and reported a stockholders' (deficit) of (\$3,985,558), the Panel suspended, pending delisting, the company's securities.

Determination: The company was properly suspended, pending delisting, because at the time of the Panel's decision the company was not able to demonstrate compliance with the minimum stockholders' equity requirement or its alternatives. At the time of the Listing Council's deliberations, the company had been deficient with the stockholders' equity requirement for more than nine months, there was nothing in the public record which demonstrated compliance, and there was no evidence that the company had regained compliance on a pro-forma basis.

Furthermore, the company's plan to increase its stockholders' equity was not sufficiently definitive at the time of the Panel decision. The company did not provide any definitive documentation regarding potential increases of equity that could be accomplished in the short-term that would enable the company to demonstrate compliance or to maintain compliance with the stockholders' equity requirement over the long term. Accordingly, after a review of the record in this matter, the Listing Council affirmed the Panel's decision to delist the company's securities for failure to demonstrate compliance with the minimum stockholders' equity requirement or its alternatives, as set forth in Rule 4310(c)(2)(B) for continued listing on the Capital Market.

* * *

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Securities and Exchange Commission ("Commission"). This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: As a separate and additional ground for affirming the Panel's decision, the Listing Council noted that the company had not followed through on its plans to file its delinquent September 30, 2006 Form 10-Q "within five business days after filing its Form 10-K", and was still delinquent in its periodic reporting obligation.

Determination: As an additional ground for affirming the delisting, the Listing Council found that the company had not demonstrated compliance with the filing requirement and thus, was not in compliance with Listing Rule 4310(c)(14).

Publication Date*: 7/31/2012

Identification Number: 636

Listing Council Decision 2007-3

Identification
Number 637

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Securities and Exchange Commission ("Commission"). This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company was not able to file its delinquent periodic SEC reports due to its own stock option backdating investigation and the investigation of its former parent company.* Based on a Panel decision, the company was scheduled to be suspended, pending delisting, by the Panel, because the Panel was at the limit of its discretionary authority. The Listing Council exercised its discretionary authority by calling for review the Panel's decision, and by also determining to stay any future Panel determinations to suspend the company's securities from trading, pending further action by the Listing Council.

Determination: The company was suspended, pending delisting, by the Listing Council because the company was not current in all required public filings. Furthermore, in its submission to the Listing Council, the company noted that it was dependent on its former parent to complete its financial restatements. Given that the former parent company could not demonstrate compliance within 60 days, the company would also not be able to demonstrate compliance within the limits of the Listing Council's discretion of 60 days. The

Listing Council has considered the extraordinary circumstances that many companies find themselves in and has undertaken a facts and circumstances analysis in this case to determine if additional remedies are appropriate.

The Listing Council considered many factors, including, but not limited to, the following:

- The company took appropriate steps once the potential stock option problem had been identified. The company informed its Audit Committee, who, in turn, directed management to conduct a review of the company's stock option issuance practices since the date of the company's initial public offering. The company's investigation was concluded in a month's time.
- Upon the conclusion of the company's internal investigation, even though no material exceptions were identified, the company adopted remedial measures that strengthened the stock options granting process to avoid a re-occurrence of this problem.
- Once the preliminary results of the former parent's Special Committee were discussed with the company's Board, the company promptly notified the investing public of its need to restate its financial statement and cautioned investors not to rely on previously filed financial information.
- Once the preliminary results of the former parent's Special Committee were discussed with the company's Board, the company removed those Board members implicated in the investigation.

The Listing Council was also particularly cognizant, and considered, that the Panel had exhausted its ability to provide the company with an additional extension of time, and would have provided the company more time if available under the rules. Accordingly, the Listing Council finds that the Panel's determination to delist the company's securities for failure to comply with the filing requirement, but staying the suspension pending further action by the Listing Council, was appropriate at the time of the decision. However, after a review of the record in this matter, the Listing Council notes that the company is wholly dependent on receiving information from its former parent company before it can move forward and finalize its restatements. When asked by the Listing Council for a definitive date when the company could demonstrate compliance, the company noted that it was unable to provide a specific date when it could file its delinquent periodic reports so as to demonstrate compliance with Listing Rule 4310(c)(14). While the Listing Council is extremely sympathetic to the company's plight, the Listing Council sees no reason to exercise its discretionary authority to provide additional time for compliance. The Listing Council finds that the company's plan of compliance is not sufficiently definitive and the company has not provided adequate assurances that the delinquent periodic reports could be filed within the next 60 days, the limit of the Listing Council's discretion. Based on the foregoing, the Listing Council has determined to suspend, pending delisting, the company's securities from The NASDAQ Stock Market because the company does not comply with the filing requirement of Listing Rule 4310(c)(14).

* Prior to its initial public offering, the company was a wholly owned subsidiary of its former parent company.

Publication Date*: 7/31/2012

Identification Number: 637

Listing Council Decision 2007-2

Identification
Number 638

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company was not able to file its delinquent periodic SEC reports due to its own stock option backdating investigation and the investigation of its parent company. Based on a Panel decision, the company was scheduled to be suspended, pending delisting, by the Panel, because the Panel was at the limit of its discretionary authority. The Listing Council exercised its discretionary authority by calling for review the Panel's decision, and by also determining to stay any future Panel determinations to suspend the company's securities from trading, pending further action by the Listing Council.

Determination: The company was suspended, pending delisting, by the Listing Council because the company was not current in all required public filings. Furthermore, in its submission to the Listing Council, the company noted that it was dependent on the completion of financial restatements by its parent company. Given that the parent company could not demonstrate compliance within 60 days, the company would also not be able to demonstrate compliance within the limits of the Listing Council's discretion of 60 days. The Listing Council has considered the extraordinary circumstances that many companies find themselves in and has undertaken a facts and circumstances analysis in this case to determine if additional remedies are appropriate.

The Listing Council considered many factors, including, but not limited to, the following:

- The company took appropriate steps once the potential stock option problem was identified when its Audit Committee, engaged an outside law firm, who in turn engaged independent forensic accountants to assist in conducting an internal investigation of the company's option grant practices.

- The company promptly self-reported to the appropriate regulatory authorities when it contacted the SEC Division of Enforcement
- The company has frozen all stock option exercises until its restated financial statements are filed.
- Once the internal investigation was completed, the company adopted remedial measures that strengthened the stock options granting process to avoid a re-occurrence of this problem.
- Once the preliminary results of the parent's Special Committee were discussed with the Board, the company removed those Board members implicated in the investigation.
- Once the preliminary results of the parent's Special Committee were discussed with the company's Board, the company promptly notified the investing public of its need to restate its financial statements and cautioned investors not to rely on previously filed financial information.

The Listing Council was also particularly cognizant, and considered, that the Panel had exhausted its ability to provide the company with an additional extension of time, and would have provided the company more time if available under the rules. Accordingly, the Listing Council finds that the Panel's determination to delist the company's securities for failure to comply with the filing requirement, but staying the suspension pending further action by the Listing Council, was appropriate at the time of the decision. However, after a review of the record in this matter, the Listing Council notes that the company is wholly dependent on receiving information from its parent company before it can move forward and finalize its own restatements. When asked by the Listing Council for a definitive date when the company could demonstrate compliance, the company noted that it was unable to predict when it could file its delinquent periodic reports so as to demonstrate compliance with Listing Rule 4310(c)(14). As such, the Listing Council sees no reason to exercise its discretion, to provide additional time for compliance, in this particular instance. The Listing Council finds that the company's plan of compliance is not sufficiently definitive and the company has not provided adequate assurances that the delinquent periodic reports could be filed within the next 60 days, the limit of the Listing Council's discretion. Based on the foregoing, the Listing Council has determined to suspend, pending delisting, the company's securities from The NASDAQ Stock Market because the company does not comply with the filing requirement of Listing Rule 4310(c)(14).

Publication Date*: 7/31/2012

Identification Number: 638

Listing Council Decision 2007-1

Identification
Number 639

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company was not able to file its delinquent periodic SEC reports due to a stock option backdating investigation. Based on a Panel's decision, the company was scheduled to be suspended, pending delisting, by the Panel, because the Panel was at the limit of its discretionary authority. The Listing Council exercised its discretionary authority by calling for review the Panel's decision, and by also determining to stay any future Panel determinations to suspend the company's securities from trading, pending further action by the Listing Council.

Determination: The company was suspended, pending delisting, by the Listing Council because the company was not current in all required public filings. Furthermore, in its submission to the Listing Council, the company noted that it could not demonstrate compliance within 60 days, which was outside the limits of the Listing Council's discretion. The Listing Council has considered the extraordinary circumstances that many companies find themselves in and has undertaken a facts and circumstances analysis in this case to determine if additional remedies are appropriate.

The Listing Council recognizes that the company:

- Reacted quickly and took appropriate steps once the potential stock option problem was identified. The company moved quickly to inform its Audit Committee, who, in turn, immediately began an internal investigation, with the help of outside consultants, to determine the depth and breadth of the problem.
- Promptly notified regulatory authorities and the investing public of its internal investigation and the investigation of the SEC and the Department of Justice.
- Removed and replaced its Chairman of the Board, CFO, and Senior General Counsel, once the preliminary results of the Special Committee were discussed with the Board.
- Adopted remedial measures recommended by the Special Committee such as freezing all stock option exercises until restated financial statements are filed.
- Promptly notified the investing public of its need to restate its financial statements and cautioned investors not to rely on

previously filed financial information.

- Recently engaged five new, independent, outside directors.

The Listing Council was also particularly cognizant, and considered, that the Panel had exhausted its ability to provide the company with an additional extension of time, and would have provided the company more time if available under the rules.

Accordingly, the Listing Council finds that the Panel's determination to delist the company's securities for failure to comply with the filing requirement, but staying the suspension pending further action by the Listing Council, was appropriate at the time of the decision. However, after a review of the record in this matter, the Listing Council notes that Listing Rule 4802(b) only allows the Listing Council the discretion to grant exceptions for a period not to exceed 60 days from the date of the Listing Council Decision or 180 days from the date of the Panel Decision with respect to the deficiency for which the exception is granted. However, the company, in its supplemental submission to the Council, stated that it did not expect to be able to complete its "new" investigation until the second quarter of 2007, which also contemplates that the company would not be able to demonstrate compliance with Listing Rule 4310(c)(14) until some unknown time thereafter.

Consequently, the Listing Council finds that even if it determined to exercise the full extent of its discretion on behalf of the company, by the company's own admission, such time would still not be enough to demonstrate compliance with Listing Rule 4310(c)(14). As such, the Listing Council sees no reason to exercise its discretion in this particular instance. The Listing Council finds that the company's plan of compliance is not sufficiently definitive and does not appear to be able to be executed in the near term. Based on the foregoing, the Listing Council has determined to suspend, pending delisting, the company's securities from The NASDAQ Stock Market because the company does not comply with the filing requirement of Listing Rule 4310(c)(14).

Publication Date*: 7/31/2012

Identification Number: 639

Listing Council Decision 2006-11

Identification
Number 640

Rule 4350(i)(1)(D)(ii): Each issuer shall require shareholder approval or prior to the issuance of securities...in connection with a transaction other than a public offering involving...(ii) the sale, issuance or potential issuance by the company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.

Issue: The company failed to obtain shareholder approval before issuing Series E preferred stock that was convertible into the common stock. The company had previously completed two series of similar financings. After analysis, Staff determined to aggregate the three financings. As such, when aggregated with the prior financings, the Series E preferred stock transaction required shareholder approval because it was issued at a discount to market value and its issuance could potentially exceed greater than 20% of the company's pre-transaction total shares outstanding. The Panel delisted the company's securities based on a violation of the shareholder approval rules.

Determination: The company was properly suspended because it had violated the shareholder approval requirements, as set forth in Rule 4350(i)(1)(D)(ii). NASDAQ shareholder approval requirements are designed to provide shareholders with a meaningful voice in significant transactions and in transactions where they may face significant dilution, such as in the current case before the Listing Council. The Listing Council believes that this voice, mandated by NASDAQ rules, is a basic tenet of the NASDAQ corporate governance rules. The NASDAQ shareholder approval requirements are also designed to provide shareholders with notice prior to the consummation of the transaction so that they have the opportunity to sell their shares. In this case, there was no shareholder vote or advance notice of the consummation of this transaction. The Listing Council agrees with the Panel's assessment that because the Series E documents do not by their terms preclude an issuance without shareholder approval; there exists a theoretical possibility that the company could be compelled to issue the securities. The Listing Council also considered the company's argument that it would either restructure the transaction with investors unrelated to the Series C, D, and E transactions in an effort to craft a re-financing plan that would allow the company to unwind the Series E transaction, or move forward with a shareholder vote for approval of the Series E transaction. To date the company has done neither. As such, the company is still in violation of the shareholder approval rules. At the time of its deliberations, the Listing Council noted that: (i) there have been no Form 8-K filings with announcements regarding a re-financing plan that would allow the company to unwind the Series E transaction, (ii) the company's recently filed definitive proxy statement for its annual meeting of stockholders and did not include any proposals to obtain shareholder approval of the Series E transaction, and (iii) the company did not provide an update as to the status of its previously filed amended proxy statement and notice of a special meeting of shareholders, in which the company was seeking shareholder approval for the Series E financing. The Listing Council does not disagree with the company's assessment that its imperfect efforts to file completed Listing of Additional Shares Notifications should be the cause of its delisting. However, the Listing Council notes that the company was effectively put on notice by staff's letter, regarding its, first of three, Listing of Additional Shares Notification violations. The Listing of Additional Shares program is used by NASDAQ to monitor compliance with listing rules governing shareholder approval, public interest concerns, reverse mergers, and voting rights. As such, the Listing Council views compliance with the Listing of Additional Shares program as essential in order to protect investors in securities listed on

The NASDAQ Stock Market.

The Listing Council is aware that the company is a repeat offender of both the filing of Listing of Additional Shares Notifications and the shareholder approval requirements. If the company was a first time offender, the Listing Council may have been more sympathetic, such is not the case here. In its deliberations, the Listing Council considered that: (i) there is a large amount of easily accessible information on the NASDAQ Legal and Compliance website regarding staff's views as to when shareholder approval for transactions is required and when a Listing of Additional Shares Notification must be filed; (ii) Staff stands ready to offer informal guidance to assist issuers in structuring transactions so that there will not be violations of the Marketplace Rules; and (iii) there is a process pursuant to Rule 4550, which requires the payment of a fee, for formal guidance regarding shareholder approval interpretations. As such, the company's argument that once its senior management and Board learned of the repeated Listing of Additional Shares violations they acted promptly and decisively to ensure that no similar violations would occur in the future, was not persuasive. Management should have been on notice with the staff's warning letter to become more actively engaged and should have taken proactive steps at that time in an effort to prevent future violations. Based on the foregoing, the Listing Council affirms the Panel's decision to delist the company's securities from The NASDAQ Stock Market.

* * *

Rule 4310(c)(4): For continued inclusion, the minimum bid price per share for common stock shall be \$1.

Issue: At the time of the Listing Council's deliberations, the bid price of the company's common stock was below \$1.

Determination: As an additional and separate ground for its decision, the Listing Council finds that the company fails to comply with the \$1.00 minimum bid price requirement contained in Listing Rule 4310(c)(4). The Listing Council notes that although the company was provided an opportunity to address its non-compliance with this rule, the company declined to do so. Given that at the time of the Listing Council's deliberations the company's bid price as quoted on the OTC Bulletin Board was \$0.57, the Listing Council finds this violation of Listing Rule 4310(c)(4) as a separate and additional basis for affirming the company's suspension and delisting from The NASDAQ Stock Market.

Publication Date*: 7/31/2012

Identification Number: 640

Listing Council Decision 2006-10

Identification
Number 641

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Securities and Exchange Commission ("Commission"). This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company stated that its filing of the Form 10-K for the fiscal year ended December 31, 2005 would be delayed to allow for the completion of an ongoing internal investigation, by a Special Committee of its board of directors, of company practices related to stock option grants to officers and directors, and related matters. The Panel delisted the company's securities based on a filing delinquency.

Determination: The Listing Council has considered that the Panel discretion under Listing Rule 4802(b) is limited to 90 days from the date of the Panel's original decision, not to exceed 180 days from the date of the staff's determination, and that such limit of discretion, did not allow this Panel the ability to provide the company with additional relief. Accordingly, the Listing Council finds that the Panel's determination to delist the company's securities from The NASDAQ Stock Market, for failure to comply with the filing requirement of Rule 4310(c)(14), was appropriate at the time of the decision. However, after a review of the record in this matter, the Listing Council has determined to exercise its discretionary authority, under Rule 4802(b)*, to: (i) remove the suspension of trading, and (ii) grant the company a 60 day exception period to demonstrate compliance with all of the Global Market continued listing requirements. In reaching its determination, the Listing Council applied a facts and circumstances analysis, and found that based on its analysis, that this company should be given additional time to become compliant with NASDAQ's filing requirement.

The Listing Council considered many factors, including, but not limited to, the following:

- The company reacted quickly and took appropriate steps once the potential stock option problem was identified. The company informed its Audit Committee, who, in turn, immediately began an internal investigation, with the help of outside consultants, to determine the depth and breadth of the problem.
- The company promptly notified regulatory authorities and the investing public of its internal investigation. Once the preliminary

results of the Special Committee were discussed with the Board, the company removed and replaced its Chairman of the Board and CFO.

- After the investigation was concluded, the company adopted all remedial measures recommended by the Audit Committee. Upon the conclusion of the internal investigation, the company promptly notified the investing public of its need to restate its financial statement and cautioned investors not to rely on previously filed financial information.

The Listing Council also considered that the company was not in any other distress and that, but for the options issue, the company was ready to remedy its filing delinquency and, based upon historical financial information, appeared to have the financial strength to continue to meet the maintenance standards of the Global Market. The Listing Council understood that the restatement process had been slowed by the perceived lack of guidance, but that the SEC's Office of Chief Accountant had recently provided interpretive guidance on the matter. The company has already provided the SEC's Office of Chief Accountant with an opportunity to preview its analysis and disclosure for stock options, before the company will issue its restatements.

The Listing Council was also particularly cognizant, and considered, that the Panel had exhausted its ability to provide the company with an additional extension of time, and would have provided the company more time if available under the rules. While the Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information, the Listing Council balanced its analysis with the extraordinary circumstances in which many companies find themselves. The Listing Council is sympathetic to the company in that it is not the only company that is currently ensnared in the thorny issues surrounding the potential restatement of financial statements as a result of the accounting for stock option grants. The Listing Council has considered the extraordinary circumstances that many companies find themselves in and will undertake a facts and circumstances analysis in each case to determine if additional remedies are appropriate. Based upon the record, the Listing Council recognized that the company has been pro-active in trying to regain its status as a good corporate citizen, and believed that such diligence should be rewarded with an extension of time to demonstrate compliance. As such, pursuant Listing Rule 4802(b), the Listing Council finds that it is appropriate in this instance to exercise its discretionary authority and provide the company with a short extension of time to demonstrate compliance with Listing Rule 4310(c)(14).

* Listing Rule 4802(b) allows the Listing Council to grant exceptions for a period not to exceed 60 days from the date of the Listing Council Decision or 180 days from the date of the Panel Decision with respect to the deficiency for which the exception is granted, in each case where it deems appropriate. If Staff determines that there are no public interest concerns that would preclude the company from rejoining the Global Market, the Listing Council finds that the company should be immediately re-instated to trading and shall be provided with a 60 day extension, to become current in its periodic reporting obligation pursuant to Listing Rule 4310(c)(14). If by the end of the exception period, the company has not complied with Listing Rule 4310(c)(14), the company's securities will be resuspended at the opening of business the following day, and a Form 25, notification of removal from listing, will then be filed with the SEC as required by SEC Rule 19d-1. If, at any time during the exception period, the company becomes deficient in a continued listing requirement of the Global Market, other than the filing requirement, the company will not be given an opportunity to be heard, its securities will be re-suspended, and a Form 25 will be filed with the SEC.

Publication Date*: 7/31/2012

Identification Number: 641

Listing Council Decision 2006-9

Identification
Number 642

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Securities and Exchange Commission ("Commission"). This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company was unable to timely file its Form 10-K for the year ended December 31, 2005, because management required additional time to complete its assessment of the effectiveness of its internal control over financial reporting under Section 404 of the Sarbanes-Oxley Act of 2002. The Panel delisted the company's securities based on a filing delinquency.

Determination: The company was properly delisted because at the time of the Panel's decision the company was not current in all required public filings. As of the date of the Listing Council's consideration of this matter, the company had filed its delinquent 10-K for the year ended December 31, 2005; however, the company had not filed its Form 10-Q for the quarter ended March 31, 2006. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. The Listing Council finds that investors in securities listed on The NASDAQ Stock Market are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations

under the Securities Exchange Act of 1934. In this case, however, even though as of the date of the Listing Council's deliberations, the company had filed its delinquent Form 10-K for the year ended December 31, 2005, it has still not filed its delinquent Form 10-Q for the quarter ended March 31, 2006. As such, investors did not have access to accurate financial information regarding the company from October 1, 2005 until July 7, 2006, or a period of approximately nine months, and still do not have complete accurate financial information. At the time of the Panel's decision, the company was not current in all required public filings. Furthermore, in the absence of accurate and reliable financial statements, Staff is unable to determine if the company is in compliance with all of the National Market continued listing requirements.

The Listing Council also denies the company's request for a 60-day exception to re-list its securities upon becoming current with its periodic reporting obligation. While the Listing Council has the requisite discretionary authority under Listing Rule 4802(b) to entertain such request, the Listing Council finds that it was not appropriate in this instance, given that: (i) the company is a recent repeat offender of the filing requirement. The company's late filings were the third and fourth consecutive late filings for the company in the past year; (ii) the company has not provided current accurate financial information, and it is unclear to the Listing Council whether the company currently meets either the initial or continued listing requirements for the National Market, (iii) the company's current filing delinquencies are directly related to many of the issues resulting in its prior delinquency and appearance before a Panel in November 2005, and (iv) the Listing Council's concurrence with the Panel's assessment that "multiple deadlines set by the company itself were unmet." In fact, the Listing Council noted that the company filed its December 31, 2005 Form 10-K on July 7, 2006, one month after the June 5, 2006 extension date it had assured the Panel it could file by, and one week after the June 30, 2006 date it promised in its submission to the Listing Council. The Listing Council notes that Listing Rule 4802(f)* provides, in part, that a security that has been delisted shall be required, prior to reinclusion, to comply with the requirements for initial inclusion. As such, because the Panel appropriately delisted the company's securities from the National Market, the initial listing requirements provide the correct standard for a review of the company's listing qualifications. The Listing Council finds that the company will need to file a new listing application together with all applicable initial fees with the Listing Qualifications Department, and the review of such application should be handled in the same manner as any new application to trade.

* Listing Rule 4802(f) replaced former Listing Rule 4430(e). See SR-NASD-2004-125, which was effective August 26, 2005.

Publication Date*: 7/31/2012

Identification Number: 642

Listing Council Decision 2006-8

Identification
Number 643

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Securities and Exchange Commission ("Commission"). This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company was unable to timely file its Form 10-K for the fiscal year ended September 30, 2005, due to accounting issues identified after the company moved its corporate headquarters and changed auditors. Thereafter, the company failed to timely file Forms 10-Q for the quarters ended December 31, 2005 and March 31, 2006. Additionally, the company determined that its previously filed financial statements from September 2002 forward should not be relied upon. The Panel delisted the company's securities based on a filing delinquency.

Determination: The company was properly delisted because at the time of the Panel's decision the company was not current in all required public filings. As of the date of the Listing Council's consideration of this matter, the company had still not filed its Form 10-K for the fiscal year ended September 30, 2005, Forms 10-Q for the quarters ended December 31, 2005 and March 31, 2006, or any prior period restatements. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. The Listing Council finds that investors in securities listed on The NASDAQ Stock Market are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934. In this case, however, investors have not had access to accurate financial information regarding the company from July 1, 2005 through the present, a period of over 12 months. At the time of the Panel's decision, the company was not current in all required public filings. Furthermore, in the absence of accurate and reliable financial statements, Staff is unable to determine if the company is in compliance with all of the National Market continued listing requirements.

The company also requested that the Listing Council grant the company an expedited re-listing on upon becoming current with its periodic reporting obligation. The Listing Council denies this request and believes that the exception is not appropriate in this instance. The Listing Council notes that the independent Investigation began in December 2005; however, it was not until mid-May 2006, a period of

over five months, before the Panel was provided with any indication that the company was also dealing with signs of earnings management, possible CEO involvement, or tone at the top issues. The Listing Council views the Panel's behavior as sympathetic to the company's situation; particularly, after the company's previous independent auditors advised the company's management and the Audit Committee of a material weakness related to insufficient personnel resources and the technical accounting expertise within the company's accounting function, and thereafter when concerns regarding the accuracy of the work of the company's independent consultant further delayed the company meeting its deadlines. While the Listing Council finds that the Panel was generous, it does not find fault with the Panel's judgment, in affording the company the multiple extensions and opportunities to achieve the company-proffered and, subsequently missed, designated milestones. The Panel appeared to provide the company with every opportunity to cure its "accounting issues"; however, the results of the Audit Committee Investigation clearly indicated there were other than accounting issues that plagued the company. The Listing Council also recognizes that it was not until late May 2006, five months after the company attended a Panel Hearing and disclosed the ongoing Investigation, before the company was finally delisted. The Listing Council notes that Listing Rule 4802(f)* provides, in part, that a security that has been delisted shall be required, prior to reinclusion, to comply with the requirements for initial inclusion. As such, because the Panel appropriately delisted the company's securities from the National Market, the initial listing requirements provide the correct standard for a review of the company's listing qualifications. The Listing Council finds that the company will need to file a new listing application together with all applicable initial fees with the Listing Qualifications Department, and the review of such application should be handled in the same manner as any new application to trade.

* Listing Rule 4802(f) replaced former Listing Rule 4430(e). See SR-NASD-2004-125, which was effective August 26, 2005.

Publication Date*: 7/31/2012

Identification Number: 643

Listing Council Decision 2006-7

Identification
Number 644

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Securities and Exchange Commission ("Commission"). This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company was unable to timely file its Form 10-Q for the quarter ended September 30, 2005, due to the resignation of their auditors. Additionally, the company's new auditors questioned the company's accounting for tax expense and deferred tax assets for 2003 and 2004. At the time of the Panel's decision, the company had still not filed its Forms 10-Q for the quarters ended September 30, 2005 and March 31, 2006 or Form 10-K for the year ended December 31, 2005. The Panel delisted the company's securities based on a filing delinquency.

Determination: The company was properly delisted because at the time of the Panel's decision, the company was not current in all required public filings. As of the date of the Listing Council's consideration of this matter, the company had still not filed its delinquent periodic reports. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. Investors in securities listed on The NASDAQ Stock Market are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934. In this case, investors did not have access to accurate financial information regarding the company, for over eleven months, from June 30, 2005 through the date of the Listing Council's deliberations. The Listing Council notes that in the absence of accurate and reliable financial statements, Staff is unable to determine if the company was in compliance with all of the Capital Market continued listing requirements. The Listing Council denies the company's request for a 60-day exception to re-list its securities on the Capital Market upon becoming current with its periodic reporting obligations. The Listing Council finds that it is not appropriate in this instance, given that the company was a recent repeat offender of the filing requirement, had not provided accurate financial information for over eleven months, and it was unclear to the Listing Council whether the company met either the initial or continued listing requirements for the Capital Market. The Listing Council also denies the company's request that it be allowed to re-list under the continued listing requirements on the Capital Market upon becoming current with its periodic reporting obligations. The Listing Council notes that Listing Rule 4802(f)* provides, in part, that a security that has been delisted shall be required, prior to re-inclusion, to comply with the requirements for initial inclusion. As such, because the Panel appropriately delisted the company's securities from the Capital Market, the initial listing requirements provide the correct standard for a review of the company's listing qualifications. The Listing Council finds that the company will need to file a new listing application together with all applicable initial fees with Listing Qualifications, and the review of such application should be handled in the same manner as any new application to trade on The NASDAQ Stock Market.

*Rule 4802(f) replaced former Listing Rule 4430(e). See SR-NASD-2004-125, which became effective on August 26, 2005.

Publication Date*: 7/31/2012

Identification Number: 644

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Securities and Exchange Commission ("Commission"). This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company was unable to timely file its Form 10-Q for the quarter ended June 30, 2005, due to an audit committee investigation into inventory invoices that had not been properly accounted for on the company's December 31, 2004 year-end financial statements. The Panel delisted the company's securities based on a filing delinquency. Subsequent to its delisting, but before the Listing Council's deliberations, the company became current in its periodic reporting obligations.

Determination: The company was properly delisted because at the time of the Panel's decision, the company was not current in all required public filings. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. The Listing Council finds that investors in securities listed on The NASDAQ Stock Market are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934. In this case, however, even though as of the date of the Listing Council's consideration of this matter, the company was current in its periodic reports obligations with the SEC, investors did not have access to accurate financial information regarding the company from August 17, 2005 until February 3, 2006, or a period of approximately five and one-half months. The Listing Council notes that the Panel provided the company with two extensions, in addition to its original extension of time, to become compliant with the filing requirement. The Listing Council observes that the Panel, in looking to provide the company with reasonable extensions, looked to the company for assistance in setting the prescribed deadlines. The Listing Council finds that the company was given every opportunity to regain compliance and notes that the company argued that it was on the "cusp of compliance" each time the Panel provided the company with an additional extension. While the Listing Council was sympathetic to the company's argument that the timing of the filing was outside the company's control, the Listing Council concurs with the Panel's assessment that the company is solely responsible for compliance with the marketplace rules.

The Listing Council also denies the company's request that the company be allowed to re-list under the continued listing requirements on the Capital Market upon becoming current with its periodic reporting obligation. The Listing Council notes that Listing Rule 4802(f)* provides, in part, that a security that has been delisted shall be required, prior to re-inclusion, to comply with the requirements for initial inclusion. As such, because the Panel appropriately delisted the company's securities from the Capital Market, the initial listing requirements provide the correct standard for a review of the company's listing qualifications. The Listing Council finds that the company will need to file a new listing application together with all applicable initial fees with Listing Qualifications, and the review of such application should be handled in the same manner as any new application to trade on The NASDAQ Stock Market.

* Listing Rule 4802(f) replaced former Listing Rule 4430(e). See SR-NASD-2004-125, which became effective on August 26, 2005.

Publication Date*: 7/31/2012

Identification Number: 645

Rules 4450(b)(4) and 4450(a)(5): \$3, or its alternative \$1, minimum bid price requirement for continued listing on the National Market.

Issue: The company's bid price was below \$1. The company did not submit a plan to regain compliance, but requested additional time to meet the continued listing requirements following its recapitalization.

Determination: The company was properly delisted for failure to comply with the minimum bid price requirement. Approximately four months had elapsed since the completion of the recapitalization, and the company had not regained compliance. Additionally, the company did not provide a definitive plan to regain compliance in the near term or maintain compliance over the long term with the minimum bid price requirement. The company also did not comply with the alternative requirements for continued listing on the National Market or for continued listing on the SmallCap Market.

* * *

Rule 4450(b)(3): Market value of publicly held shares of \$15,000,000 for continued listing on the National Market.

Issue: The market value of publicly held shares of the company's common stock was below \$15,000,000.

Determination: The company was properly delisted for failure to comply with the market value of publicly held shares requirement. The company did not provide any information indicating how it planned to regain compliance with the market value of publicly held shares requirement or maintain compliance over the long term.

Publication Date*: 7/31/2012

Identification Number: 684

Listing Council Decision 2006-5

Identification
Number 646

Rule 4310(c)(2)(B): For continued inclusion on The NASDAQ Capital Market, the issuer shall maintain:

(i) stockholders' equity of \$2,500,000; (ii) market value of listed securities of \$35,000,000; or (iii) net income from continuing operations of \$500,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

Issue: At the time of the Panel's decision, the company did not meet the minimum stockholders' equity requirement or its alternatives for continued listing on The NASDAQ Capital Market. The company's plan included an asset sale, which would allow it to demonstrate compliance. However, after the sale, the company was not able to publicly announce that the transaction had increased its stockholders' equity to \$2,500,000. The Panel delisted the company's securities.

Determination: The company was properly delisted because at the time of the Panel's decision, the company was not able to demonstrate compliance with the minimum stockholders' equity requirement or its alternatives, and its plan to regain compliance was not sufficiently definitive. At the time of the Listing Council's deliberations, the company had been non-compliant for more than twelve months, had still not provided any public filing which demonstrated compliance with the rule, and had not provided any definitive documentation regarding potential increases of equity which could be accomplished in the short-term and would allow the company to achieve and sustain compliance.

* * *

Rule 4310(c)(4): For continued inclusion, the minimum bid price per share for common stock shall be \$1.

Issue: The bid price of the company's common stock was below \$1 for approximately nine months.

Determination: The company was properly delisted for failure to comply with the minimum bid price requirement. At the time of the Listing Council's deliberations, the company's bid price was still under \$1, and the company had not proffered a plan to remedy its deficiency.

Publication Date*: 7/31/2012

Identification Number: 646

Listing Council Decision 2006-4

Identification
Number 647

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Securities and Exchange Commission ("Commission"). This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company disclosed it would not timely file its March 31, 2005 Form 10-Q because it needed to restate all of its financial statements between the periods of January 1, 2003 through December 31, 2004, due to revisions in the valuation methodologies used in securitization transactions. The Panel delisted the company's securities based on a filing delinquency.

Determination: The company was properly delisted because at the time of the Panel's decision, the company was not current in all required public filings. As of the date of the Listing Council's consideration of this matter, the company had still not filed its restated financial statements or Forms 10-Q for the quarters ended March 31, June 30, and September 30, 2005. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. Investors in securities listed on The NASDAQ Stock Market are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934. In this case, however, investors did not have access to accurate financial information regarding the company from January 1, 2002 through the date of the Listing Council's deliberations. Furthermore, in the absence of accurate and reliable financial statements, Staff is unable to

Listing Council Decision 2006-3

Identification
Number 648

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Securities and Exchange Commission ("Commission"). This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company was unable to timely file its Form 10-K for the year ended December 31, 2004, due to an audit committee investigation into the company's internal controls relating to travel and entertainment expenses. At the time of the Panel's decision, the company had filed its December 31, 2004 year-end Form 10-K and March 31, 2005 Form 10-Q, but had not filed its Forms 10-Q for the quarters ended June 30 and September 30, 2005. The Panel delisted the company's securities based on a filing delinquency.

Determination: The company was properly delisted because at the time of the Panel's decision, the company was not current in all required public filings. As of the date of the Listing Council's consideration of this matter, the company had still not filed its Forms 10-Q for the quarters ended June 30 and September 30, 2005. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. Investors in securities listed on The NASDAQ Stock Market are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934. In this case, investors did not have access to accurate financial information regarding the company, for over nine months, from April 1, 2005 through the date of the Listing Council's deliberations. The Listing Council notes that in the absence of accurate and reliable financial statements, Staff is unable to determine if the company was in compliance with all of the National Market continued listing requirements. The Listing Council denies the company's request for a 60-day exception to re-list its securities on the National Market upon becoming current with its periodic reporting obligation. The Listing Council finds that it is not appropriate in this instance, given that the company had not provided accurate financial information for over nine months, and it was unclear to the Listing Council whether the company met either the initial or continued listing requirements for the National Market.

The Listing Council also denies the company's request that the company be allowed to re-list under the continued listing requirements on the National Market upon becoming current with its periodic reporting obligations. The Listing Council notes that Listing Rule 4802(f)& provides, in part, that a security that has been delisted shall be required, prior to re-inclusion, to comply with the requirements for initial inclusion. As such, because the Panel appropriately delisted the company's securities from the National Market, the initial listing requirements provide the correct standard for a review of the company's listing qualifications. The Listing Council finds that the company will need to file a new listing application together with all applicable initial fees with Listing Qualifications, and the review of such application should be handled in the same manner as any new application to trade on The NASDAQ Stock Market.

* Rule 4802(f) replaced former Listing Rule 4430(e). See SR-NASD-2004-125, which became effective on August 26, 2005.

Listing Council Decision 2006-2

Identification
Number 649

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company's year ended December 31, 2004 Form 20-F was delinquent due to a change of independent auditors and internal accounting staff, the delayed receipt of financial information from a significant investment, and the delayed receipt of accounting information related to the company's other investments.

Determination: The company was properly delisted because at the time of the Panel's decision, the company was not current in all required public filings. As of the date of the Listing Council's deliberations, the company had still not filed its delinquent December 31,

2004 Form 20-F. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. The Listing Council finds that investors in securities listed on The NASDAQ Stock Market are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934. The Listing Council notes that in the absence of accurate and reliable financial statements, Staff is unable to determine if the company was in compliance with all of the Capital Market continued listing requirements.

Publication Date*: 7/31/2012

Identification Number: 649

Listing Council Decision 2006-1

Identification
Number 650

Rule 4300: NASDAQ ... in addition to applying the enumerated criteria set forth in the Listing Rule 4300 and 4400 Series, has broad discretionary authority over the ... continued inclusion of securities in NASDAQ in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. NASDAQ may use such discretion to ... apply additional or more stringent criteria for the ... continued inclusion of particular securities, or suspend or terminate the inclusion of particular securities based on any event, condition, or circumstance that exists or occurs that makes ... continued inclusion of the securities in NASDAQ inadvisable or unwarranted in the opinion of NASDAQ, even though the securities meet all enumerated criteria for ... continued inclusion in NASDAQ. In all circumstances where the Listing Department (as defined in Listing Rule 4801) exercises its authority under Listing Rule 4300, the Listing Department shall issue a Staff Determination under Listing Rule 4804, and in all circumstances where an Adjudicatory Body (as defined in Listing Rule 4801) exercises such authority, the use of the authority shall be described in the written decision of the Adjudicatory Body.

Issue: The company disposed of its sole operating business in March 2005. After determining that the company was a “public shell” and allowing the company a reasonable period of time to reinvest the proceeds of the sale into another operating business, the Panel applied additional and more stringent criteria and delisted the company’s securities based on public interest concerns.

Determination: The company was properly delisted because at the time of the Panel’s decision, the company was a “public shell”. In its Releases Nos. 33-8587; 34-52038; International Series Release No. 1293; and File No. S7-19-04, the Securities and Exchange Commission (“SEC”) defined a “shell company” as a registrant with no or nominal operations and either no or nominal assets, assets consisting solely of cash and cash equivalents, or assets consisting of any amount of cash and cash equivalents and nominal other assets. The SEC expressly declined to adopt a quantitative threshold to define a shell company, as doing so would, “present a serious potential problem, as [a quantitative threshold] would be more easily circumvented”. Similarly, the Listing Council was reluctant to create a bright line, qualitative standard for the definition of a “public shell”. The Listing Council believes that it is not prudent to provide objective standards, such as the total number of employees, minimum revenue and/or income thresholds, or an assessment of the general prospects for the product in development, when determining if a company is a “public shell”. The Listing Council steadfastly believes that there should be a “facts and circumstances” analysis applied to each specific case. In its efforts to determine whether a company has material tangible business operations, and thus should not be defined as a “public shell”, the Listing Council will look to a number of factors, including, but not limited to, the following: what percentage of the company’s assets are active vs. passive; whether the company generates revenues, and if so, what is the nature of the revenues, passive vs. active; are the expenses reasonably related to the revenues being generated; how many employees support the tangible business operations; what is management’s role in the company’s investments; how long has the company been without material tangible business operations; is the company subject to registration under the Investment Company Act of 1940; and, how has the company defined itself in its filings with regulators. After reviewing the company’s publicly filed financial statements, the Listing Council notes that more than 90% of the company’s total assets were passive in nature, and the non-passive assets included accounts receivable and other assets. While the company generated nine month revenues of \$281,000, only \$114,000 of expenses had been matched to the revenues as costs of services. Alternatively, the company generated \$2,853,000 year to date in “selling, general and administrative expenses”, which include payroll and payroll related expenses, legal, accounting, rent, travel and other related expenses. The company disclosed in its December 31, 2004 Form 10-KSB that it disposed of a subsidiary “constituted all of the operating assets of the Company”. The fact that the company only had four employees, two of which were administrative, was additional indications that the company did not have tangible business operations. The company’s efforts to act as a “lead negotiator” in a subsidiary’s expansion was not persuasive, given the company was still no more than a “passive” investor. The Listing Council further notes that the company appeared to have the attributes of an investment company, holding only investments and no significant operating business.

The Listing Council finds that the company had existed without an operating business since March 2005 when it disposed of its operating subsidiary. Further, the company was a “public shell” because it has failed to demonstrate that it has, or will in the near term acquire, an active operating business.

Publication Date*: 7/31/2012

Identification Number: 650

[SEC Review of Action Taken by NASDAQ: Fog Cutter Capital Group, Inc.](#) (December 21, 2005)

Publication Date*: 7/31/2012

Identification Number: 1045

Listing Council Decision 2005-9

Identification
Number 610

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: In connection with a periodic review of the company's filings, the Commission questioned the company's accounting for development costs and advances related to Indian casinos.

Determination: The company was properly delisted because at the time of the Panel's decision the company was not current in all required public filings. As of the date of the Listing Council's consideration of this matter, the company still had not filed its Form 10-K for the fiscal year ended January 2, 2005 or Forms 10-Q for the quarters ended April 3 and July 3, 2005. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. Investors in securities listed on NASDAQ are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934. The Listing Council noted that in the absence of accurate and reliable financial statements, Staff was unable to determine if the company was in compliance with all of the Capital Market continued listing requirements.

Publication Date*: 7/31/2012

Identification Number: 610

Listing Council Decision 2005-8

Identification
Number 611

Rule 4310(c)(2)(B): For continued inclusion on The NASDAQ Capital Market, the issuer shall maintain:

(i) stockholders' equity of \$2,500,000; (ii) market value of listed securities of \$35,000,000; or (iii) net income from continuing operations of \$500,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

Issue: At the time of the Panel's decision, the company did not meet the minimum stockholders' equity requirement or its alternatives for continued listing on The NASDAQ Capital Market. The company's plan of compliance included a projected increase in stockholders' equity to \$2,874,000 at June 30, 2005. However, at the time of its decision, the Panel had not received any information from the company indicating it had achieved this projection or that it planned to report stockholders' equity in compliance when it reported its second quarter earnings.

Determination: The company was properly delisted because at the time of the Panel's decision the company was not able to demonstrate compliance with the minimum stockholders' equity requirement or its alternatives, and its plan to regain compliance was not sufficiently definitive. At the time of the Listing Council's deliberations, the company had been non-compliant for more than ten months and had still not provided any public filing which demonstrated compliance with the rule.

* * *

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company's March 31, 2005 Form 10-Q contained financial statements that were not reviewed by independent auditors in

conformance with SAS 100, as required by SEC Rule 10-01(d) of Regulation S-X. As such, the company did not comply with the filing requirement contained in Listing Rule 4310(c)(14).

Determination: The company was properly delisted because at the time of the Panel's decision the company was not current in all required public filings. Even though the company became current shortly before the Listing Council's deliberations, investors had been without access to current financial information for a period of nine months. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. Investors in securities listed on NASDAQ are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934. The Listing Council noted that in the absence of accurate and reliable financial statements, Staff was unable to determine if the company was in compliance with all of the Capital Market continued listing requirements.

Publication Date*: 7/31/2012

Identification Number: 611

Listing Council Decision 2005-7

Identification
Number 612

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: In connection with a periodic review of the company's filings, the Commission questioned the company's allocation to goodwill of customer related intangibles that were obtained through the acquisition of other businesses. Thereafter, the company disclosed that its audit committee concluded the previously issued financial statements for fiscal years 2000, 2001, 2002 and 2003 and each of the four quarters of fiscal 2003 and the first three quarters of fiscal 2004 would need to be restated. The Panel delisted the company's securities based on a filing delinquency.

Determination: The company was properly delisted because at the time of the Panel's decision the company was not current in all required public filings. As of the date of the Listing Council's consideration of this matter, the company had still not filed its Form 10-K for the year ended December 26, 2004, Forms 10-Q for the quarters ended March 31 and June 26, 2005 or any prior period restatements. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. Investors in securities listed on NASDAQ are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934. In this case, however, investors did not have access to accurate financial information regarding the company from December 26, 1999 through the date of the Listing Council's deliberations. Furthermore, in the absence of accurate and reliable financial statements, Staff was unable to determine if the company was in compliance with all of the National Market continued listing requirements.

Publication Date*: 7/31/2012

Identification Number: 612

Listing Council Decision 2005-6

Identification
Number 613

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: At the Panel hearing, the company represented that it would file its delinquent December 31, 2004 Form 10-K later that day, and its delinquent March 31, 2005 Form 10-Q within 45 days. The company did not file its delinquent Form 10-K as promised and did not update the Panel as to the reasons until prompted by Panel staff. The Panel delisted the company's securities based on a filing delinquency, after the company filed its delinquent Form 10-K, because the company had not filed its Form 10-Q for the quarter ended March 31, 2005 and had not demonstrated the ability to maintain compliance with the filing requirement over the long term.

Determination: The company was properly delisted because at the time of the Panel's decision the company was not current in all

required public filings. The Listing Council found that the Panel relied on the veracity of the company's representations at the hearing that the company would file its Form 10-K later that day. The company's acts of not filing its Form 10-K, failing to contact the Panel to correct its representations, and not informing the Panel as to the reasons for the failure to file, were significant events that the company knew, or should have known, were "material" to the Panel's ultimate decision in this case. Given the Panel's reliance on the company's assurance that the Form 10-K filing would be made that day, the Listing Council found that the company should have reported these material events to the Panel immediately.

The Listing Council also found it reasonable, based upon all the facts and circumstances, including the company's inability to file its Form 10-K on a timely basis, the lack of disclosure to the Panel, and recent history of delinquent filings, that the Panel questioned the company's ability to maintain compliance with the filing requirement over the long term.

Publication Date*: 7/31/2012

Identification Number: 613

Listing Council Decision 2005-5

Identification
Number 614

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Rule 4300*: NASDAQ, in addition to applying the enumerated criteria set forth in the Listing Rule 4300 and 4400 Series, will exercise broad discretionary authority over the continued inclusion of securities in NASDAQ in order to maintain the quality of and public confidence in its market. Under such broad discretion, NASDAQ may apply additional or more stringent criteria for the continued inclusion of particular securities or suspend or terminate the inclusion of particular securities based on any event, condition, or circumstance which exists or occurs that makes continued inclusion of the securities in NASDAQ inadvisable or unwarranted in the opinion of NASDAQ, even though the securities meet all enumerated criteria for continued inclusion in NASDAQ.

Issue: The Panel gave the company an extension to file its delinquent Form 10-Q for the quarter ended September 30, 2004. Pursuant to Listing Rule 4300, the Panel also exercised its discretionary authority and applied additional and more stringent criteria, whereby the Panel provided for a monitoring period of the company, which required the company to timely file all periodic reports ending on or before December 31, 2005. The company did not file the Form 10-Q within the original extension period and subsequently received additional extensions. The company also did not timely file its Form 10-K for the fiscal year ended December 31, 2004. The Listing Council called the Panel's decision to determine if the additional extensions were appropriate.

Determination: The Panel's decision was reversed because, after citing Rule 4300 and applying additional and more stringent criteria, the Panel did not hold the company to the heightened standard. When the company missed its Panel imposed deadlines, the Panel provided the company with additional time. At the time of the Listing Council's consideration, the company still had not filed its delinquent December 31, 2004 Form 10-K. Consequently, the Listing Council determined, as a policy, to limit the discretion that Panels could exercise and found that exceptions granted by the Panel should not be greater than 90 days from the date of issuance of the Panel's decision.

* Please note that Listing Rule 4300 was re-codified and changed in August 2005. NASDAQ also added interpretative material regarding the use of its discretionary authority. For the current version of the rule, see Marketplace Listing Rule 4300 and IM-4300.

Publication Date*: 7/31/2012

Identification Number: 614

Listing Council Decision 2005-4

Identification
Number 615

Rule 4310(c)(2)(B): For continued inclusion on The NASDAQ Capital Market, the issuer shall maintain:
(i) stockholders' equity of \$2,500,000; (ii) market value of listed securities of \$35,000,000; or (iii) net income from continuing operations of \$500,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

Issue: At the time of the Panel decision, the company did not meet the minimum stockholders' equity requirement or its alternatives for continued listing on The NASDAQ Capital Market. The company had been deficient for over six months, its plan to raise equity was not

definitive, and the sale of a subsidiary would not close for at least another quarter. The company also argued that it could evidence compliance by demonstrating \$500,000 in net income from continuing operations by the end of its third quarter.

Determination: The company was properly delisted because at the time of the Panel's decision the company was not able to demonstrate compliance with the minimum stockholders' equity requirement or its alternatives. The company's plans to increase its stockholders' equity were not sufficiently definitive because: (i) the company did not provide any documentation regarding potential sales of equity, which could be accomplished in the short-term and (ii) the sale of a company subsidiary would not close for at least another three months. The Listing Council also rejected the company's position that it could demonstrate compliance with the \$500,000 net income from continuing operations alternative in the Rule by the end of the third quarter of 2005. The Listing Council noted that the Rule requires a demonstration of net income from continuing operations in the most recently completed fiscal year or in two of the last three most recently completed fiscal years, and, as such, the Rule does not provide for compliance on a prospective basis. Consequently, the company would not be able to demonstrate compliance before its 2005 fiscal year end.

Publication Date*: 7/31/2012

Identification Number: 615

Listing Council Decision 2005-3

Identification
Number 616

Rule 4310(c)(2)(B): For continued inclusion on The NASDAQ Capital Market, the issuer shall maintain: (i) stockholders' equity of \$2,500,000; (ii) market value of listed securities of \$35,000,000; or (iii) net income from continuing operations of \$500,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

Issue: At the time of the Panel's decision, the company did not meet the minimum stockholders' equity requirement or its alternatives for continued listing on The NASDAQ Capital Market. The company argued that it would demonstrate in excess of \$500,000 in net income from continuing operations when it filed its Form 10-K for the fiscal year ended December 31, 2004. As such, the company requested an exception for six months to file its Form 10-K. Alternatively, the company requested additional time to consummate a combination with an American Stock Exchange listed company. The effect of the combination would increase the company's stockholders' equity above the \$2,500,000 continued listing requirement. The Panel was unwilling to grant the company additional time to file its Form 10-K and also opined that the combination was not sufficiently definitive for an extension of time.

Determination: The company was properly delisted because at the time of the Panel's decision the company was not able to demonstrate compliance with the minimum stockholders' equity requirement or its alternatives. At the time of the Listing Council's deliberations, the company had been non-compliant for over eight months and had still not consummated its business combination with the American Stock Exchange listed company.

* * *

Rule 4350(c): Each issuer shall maintain a sufficient number of independent directors on its board of directors to satisfy the audit committee requirement set forth in Listing Rule 4310(d)(2).

Rule 4310(d)(2): Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, each of whom must: (i) be independent as defined under Listing Rule 4200(a)(15); (ii) meet the criteria for independence set forth in Rule 10A-3(b)(1) under the Act (subject to the exemptions provided in Rule 10A-3(c)); (iii) not have participated in the preparation of the financial statements of the company or any current subsidiary of the company at any time during the past three years; and (iv) be able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee who has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

Issue: After the Panel had issued its decision, a member of the company's audit committee resigned, leaving the company with only two independent audit committee members.

Determination: As a separate and additional ground for affirming the delisting of the company's common stock, the Listing Council found that because the company had not appointed a new independent director to the company's audit committee, the company had failed to demonstrate compliance with the independent directors and audit committee composition requirements.

Publication Date*: 7/31/2012

Identification Number: 616

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Securities and Exchange Commission ("Commission"). This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: After the company disclosed its audit committee's conclusions that the previously issued financial statements for the years ended December 31, 2001, 2002, and 2003, as well as all quarterly periods beginning January 1, 2001, should no longer be relied upon, the Panel delisted the company's securities based on a filing delinquency. The company had not filed its Form 10-Q for the quarter ended June 30, 2004 or any restatements.

Determination: The company was properly delisted because at the time of the Panel's decision the company was not current in all required public filings. As of the date of the Listing Council's consideration of this matter, the company had still not filed its Forms 10-Q for the quarters ended June 30 and September 30, 2004 or any prior period restatements. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. Investors in securities listed on NASDAQ are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934. In this case, investors did not have access to accurate financial information regarding the company from January 1, 2001 through the date of the Listing Council's deliberations.

* * *

Rule 4350(i)(1)(B): Each issuer shall require shareholder approval ... prior to the issuance of designated securities ... when the issuance or potential issuance will result in a change of control of the issuer.

Rule 4350(i)(1)(D)(ii): Each issuer shall require shareholder approval ... prior to the issuance of designated securities in connection with a transaction other than a public offering involving: ... (ii) the sale, issuance or potential issuance by the company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% of more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.

Issue: The company violated Rules 4350(i)(1)(B) and 4350(i)(D)(ii) by issuing greater than 20% (in this case over 50%) of its pre-transaction total shares outstanding at a discount to the market price. The company issued 17,647,058 shares of its common stock in a private placement at \$0.85 per share for a total purchase price of \$15,000,000. Following the sale, the purchasers would own 50.3% of the company's outstanding common stock and would have the right to designate a majority of the board of directors. The price of the company's common stock was \$1.65 at the time of the transaction.

Determination: Given that the company had 17,419,857 pre-transaction total shares outstanding, the transaction resulted in a greater than 20% issuance of securities and a change of control. The company was properly delisted for failure to comply with the shareholder approval requirements.

* * *

Rule 4310(c)(17): Issuers are required to notify NASDAQ 15 days prior to: (i) issuing securities that may potentially result in a change of control, or (ii) entering into a transaction that may result in the potential issuance of common stock (or securities convertible into common stock) greater than 10% of either the pre-transaction total shares outstanding or the voting power outstanding on a pre-transaction basis.

Issue: The company did not file the required listing of additional shares form notifying NASDAQ of the transaction.

Determination: The company was properly delisted for failure to comply with the listing of additional shares notification requirement.

Rule 4300*: NASDAQ, in addition to applying the enumerated criteria set forth in the Rule 4300 and 4400 Series, will exercise broad discretionary authority over the ... continued inclusion of securities in NASDAQ in order to maintain the quality of and public confidence in its market. Under such broad discretion ... NASDAQ may ... apply additional or more stringent criteria for the ... continued inclusion of particular securities or suspend or terminate the inclusion of particular securities based on any event, condition, or circumstance which exists or occurs that makes ... continued inclusion of the securities in NASDAQ inadvisable or unwarranted in the opinion of NASDAQ, even though the securities meet all enumerated criteria for ... continued inclusion in NASDAQ.

Rule 4330(a)(3): NASDAQ may, in accordance with Rule 4800 Series ... apply additional or more stringent criteria for the ... continued inclusion of particular securities or suspend or terminate the inclusion of an otherwise qualified security if ... NASDAQ deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest.

Issue: In 2003, after the company was advised its Chief Executive Officer ("CEO") and Chairman of the Board was the target of a grand jury investigation, the Board of Directors ("Board") renegotiated certain provisions of his employment agreement.

In 2004, the company's CEO and Chairman, and 55% shareholder, pled guilty to two felony counts of: (i) paying an illegal gratuity to an investment advisor and (ii) filing a false 1998 personal tax return, which resulted in him serving 18 months in federal prison, paying \$2,000,000 in restitution and a \$25,000 fine. Thereafter, the company entered into an agreement with its former CEO and Chairman, where the company would: (i) continue to pay his regular annual salary of \$350,000 and bonus during his incarceration and (ii) pay him a "leave of absence" payment in the amount of \$2,000,000 in consideration of his "good will, cooperation, and continuing assistance, and in recognition of his past service to the company, to help avoid litigation and for the other reasons." The company also agreed that he would remain Co-Chairman as well as Co-CEO of the company.

Determination: The company was properly delisted in order to preserve and strengthen the quality and integrity of and public confidence in The NASDAQ Stock Market and in order to protect prospective investors and the public interest. The nature of the offenses, which were fraud based, together with the Board of Directors responses to the offenses, pose serious public interest threats.

Specifically, the Listing Council was concerned that the company's Chairman, CEO and 55% shareholder at the time of the events that formed the basis for the fraud convictions, continued to exert influence and control over the company's affairs in his capacity as Chief Strategic Officer, Treasurer, Secretary, Director and as the company's majority shareholder, while incarcerated.

The Listing Council was also particularly concerned that, after the former Chairman and CEO was identified as the target of an investigation by the U.S Attorney's Office, the Board renegotiated certain provisions of his employment agreement and agreed to exclude, from the definition of a "for cause" termination, any termination based on the former CEO and Chairman's conviction of a felony unrelated to the company.

The Listing Council did not agree with the company that "in order to criticize the Board for agreeing to the provision, the staff must necessarily have concluded that the Board should have dismissed the former Chairman and CEO from his positions because of his plea agreement...". In the alternative, the Board could have decided not to take the pro-active step that it took, i.e., it could have left the employment agreement as it stood prior to the renegotiation.

The Listing Council found it unconscionable that the Board agreed to pay the former Chairman and CEO \$2,000,000 in addition to his regular salary and bonus. The Listing Council believed the payment was a transparent attempt to pay his court-ordered restitution related to his guilty pleas. This action was further evidence of his influence over the company, which is at odds with shareholders' interests and good corporate governance.

The Listing Council was also concerned, given the heightened scrutiny of all companies' corporate governance and the extensive efforts that have been made by Congress and NASDAQ, among others, that the company would have allowed the former Chairman and CEO to sign the certifications required of him as Co-Chief Executive Officer under Sarbanes-Oxley, but for the notice from the Bureau of Prisons.

Based on these and other actions of the Board, the Listing Council had concerns whether the Board, which is comprised of the former Chairman and CEO's friends and family, had discharged its duty to the company's shareholders and was working on behalf of the company's best interest, or on behalf of the former Chairman and CEO's interest. The Listing Council found that the former Chairman and CEO's regulatory history, along with his ability to exert influence over the operations of the company and apparent influence over Board actions, provided grounds for denying the company's request for continued listing. Accordingly, the Listing Council found that the totality of the circumstances raised public interest concerns under Rules 4300 and 4330(a)(3) that made it appropriate to apply additional and

more stringent criteria in order to preserve and strengthen the quality of and public confidence in NASDAQ and served as a basis for affirming the delisting of the company's securities.

* Please note that Rules 4300 and 4330(a) were re-codified and changed in August 2005. NASDAQ also added interpretative material regarding the use of its discretionary authority. For the current version of the rule, see Marketplace Rule 4300 and IM-4300.

Publication Date*: 7/31/2012

Identification Number: 618

Listing Council Decision 2004-12

Identification
Number 619

Rule 4310(c)(2)(B): For continued inclusion, the issuer shall maintain: (i) stockholders' equity of \$2.5 million; (ii) market value of listed securities of \$35 million; or (iii) net income from continuing operations of \$500,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

Issue: At the time of the Panel decision, the company did not meet the minimum stockholders' equity requirement or its alternatives. The company argued that it had demonstrated in excess of \$500,000 in net income from continuing operations for its first three quarters and projected compliance when it filed its Form 10-K for the year ended June 30, 2004. As such, the company requested an exception for additional time to file its Form 10-K, which would demonstrate compliance with the net income alternative in the Rule. The Panel was unwilling to grant the company the additional three months the company required to file its Form 10-K.

Determination: The company was properly delisted because at the time of the Panel's decision the company was not able to demonstrate compliance with minimum stockholders' equity requirement or its alternatives. Under Listing Rule 4330(e), a security that has been terminated from NASDAQ must meet the initial listing requirements before re-inclusion. Because the Panel properly delisted the company's securities from the SmallCap Market, the initial listing requirements provide the correct standard for a review of the company's listing qualifications. The Listing Council reversed the Panel's decision, and the Panel was instructed to relist the company, based on events occurring after the Panel's decision. Specifically, during the pendency of the Listing Council's review, the company filed its Form 10-K, which demonstrated net income from continuing operations of \$6,556,000 in the most recently completed fiscal year. As such, the company met all of the requirements for initial listing on the SmallCap Market, except for the \$4 bid price. Based upon the totality of the circumstances, the Listing Council determined to waive the \$4 initial listing bid price requirement and instead required that the company meet the \$1 continued listing bid price requirement.

Publication Date*: 7/31/2012

Identification Number: 619

Listing Council Decision 2004-11

Identification
Number 620

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: After the company disclosed that it would restate its Forms 10-Q and delay filing its Form 10-K as a result of its audit committee's investigation into accounting improprieties, the Panel delisted the company's securities based on a filing deficiency. The company had not filed its Form 10-K for the fiscal year ended December 31, 2003; Form 10-Q for the quarter ended March 31, 2004, or any prior period restatements for fiscal 2001 and 2002.

Determination: The company was properly delisted for failure to comply with the filing requirement. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. Investors in securities listed on NASDAQ are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934. In this case, however, investors did not have access to accurate financial information regarding the company for a period of approximately twenty-two months

Publication Date*: 7/31/2012

Identification Number: 620

Listing Council Decision 2004-10

Identification
Number 621

Rule 4350(g): Each issuer shall solicit proxies and provide statements for all meetings of shareholders and shall provide copies of such

proxy solicitation to NASDAQ.

Rule 4350(e): Each issuer shall hold an annual meeting of shareholders and shall provide notice of such meeting to NASDAQ. Issue: Eight months after the end of its fiscal year, the company still had not filed a definitive proxy statement with the Securities and Exchange Commission or set a definitive shareholder meeting date.

Determination: The company was properly delisted for failure to comply with the proxy solicitation and annual meeting requirements.

* * *

Rule 4350(i)(1)(D)(ii): Each issuer shall require shareholder approval ...prior to the issuance of designated securities... in connection with a transaction other than a public offering involving: ... (ii) the sale, issuance or potential issuance by the company of common stock (or securities convertible into or exercisable [for] common stock) equal to 20% or more of the common stock or 20% or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.

Issue: The company violated Listing Rule 4350(i)(1)(D)(ii) by issuing greater than 20% of the pre-transaction total shares outstanding at a discount to the market price. The offering, which was scheduled to close in two tranches, consisted of up to 20,000,000 shares of common stock at \$0.75 per share, together with the potential issuance of another 10,000,000 shares of common stock resulting from the exercise of warrants at \$1.00 per share. As such, the aggregate potential issuance would be 30,000,000 shares, or 99% of the 30,095,328 total shares outstanding on a pre-transaction basis. The first tranche consisted of approximately 2,650,000 shares of common stock, together with 1,325,000 associated warrants, with the balance of the securities to be issued only upon receiving shareholder approval. After the closing of the first tranche, but before closing the second tranche, the company's securities were delisted from The NASDAQ Stock Market. Before closing the second tranche and also before obtaining shareholder approval, the transaction was restructured to reduce the offering price of the common stock to \$0.40 per share and the warrant exercise price to \$0.50 per share. At the second closing, the company issued 25,374,999 additional shares of common stock and warrants exercisable for 12,687,502 shares of common stock, for an aggregate potential issuance of 38,062,501 shares of common stock. The company was aware, that even though it was delisted, it was still subject to NASDAQ's shareholder approval rules.

Determination: The Listing Council determined, as a separate ground, that the company's securities should not be relisted, based on the company's failure to comply with the shareholder approval requirement. The Listing Council noted that the company was aware that even though it had been delisted, it was still subject to all of NASDAQ's corporate governance rules, while appealing its Panel decision. As such, the issuance of securities in the second tranche of the offering required shareholder approval because the company issued greater than 20% of the pre-transaction total common shares outstanding at a discount to the market price.

Publication Date*: 7/31/2012

Identification Number: 621

Listing Council Decision 2004-9

Identification
Number 651

Rules 4300 and 4330(a)(3): NASDAQ may exercise its discretion in applying additional or more stringent criteria for initial or continued inclusion or suspend or terminate the inclusion of an otherwise qualified security if NASDAQ deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest.

Issue: A director of the company, who was also the president of the company's subsidiary, and a consultant to the company were indicted for conspiracy to commit commercial bribery and securities fraud. The currency used to commit the fraud was the company's securities, which were issued pursuant to a consulting agreement approved by the company's board of directors. Further, the current president and chief executive officer and the vice president and chief operating officer of the company were two of the board members that approved the issuance of securities.

Determination: The company was properly delisted in order to preserve and strengthen the quality and integrity of, and public confidence in, The NASDAQ Stock Market, and in order to protect prospective investors and the public interest. The nature of the allegations, which included conspiracy to commit commercial bribery and securities fraud, pose serious threats to the investing public, investor confidence in The NASDAQ Stock Market and the integrity of The NASDAQ Stock Market. Specifically, the Listing Council found that these facts, coupled with the board's approval of the consulting agreement and subsequent issuance of securities without performing any due diligence, appears to indicate that the company lacks adequate internal controls. The Listing Council continued to be concerned that the company's current president and chief executive officer and the vice president and chief operating officer continue to hold management and board positions within the company and yet were two of the board members who approved the consulting contract without discharging their due diligence obligation.

Rule 4350(g): Each issuer shall solicit proxies and provide statements for all meetings of shareholders and shall provide copies of such proxy solicitation to NASDAQ.

Rule 4350(e): Each issuer shall hold an annual meeting of shareholders and shall provide notice of such meeting to NASDAQ.

Issue: The company solicited proxies and held its fiscal year 2002 annual meeting in February 2004.

Determination: The company was properly delisted for failure to comply with the proxy solicitation and annual meeting requirements. Although the company solicited proxies and held a meeting in February 2004, those actions did not cure the company's obligation to solicit proxies or hold its fiscal year 2002 annual meeting in 2003.

Publication Date*: 7/31/2012

Identification Number: 651

Listing Council Decision 2004-8

Identification
Number 652

Rule 4310(c)(4): For continued inclusion, the minimum bid price per share for common stock shall be \$1.

Issue: The bid price of the company's common stock was below \$1. The company believed its common stock price would increase after it received shareholder approval for the sale of its water treatment business.

Determination: The company was properly delisted for failure to comply with the minimum bid price requirement. The company had been deficient for 237 trading days. Anticipated favorable market reaction is not a definitive plan to regain compliance with the minimum bid price requirement. Furthermore, the preliminary proxy that the company filed with the Securities and Exchange Commission did not include a proposal to effect a reverse stock split.

Publication Date*: 7/31/2012

Identification Number: 652

Listing Council Decision 2004-7

Identification
Number 653

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company disclosed, in response to concerns raised by its independent auditors that it had initiated an internal investigation into its revenue recognition and inventory accounting practices. Furthermore, the financial statements for the years ended December 31, 2001 forward would need to be revised, and the previously issued financial statements during that time period should not be relied upon. As such, the company was unable to file its Form 10-Q for the quarter ended September 30, 2003.

Determination: The company was properly delisted for failure to comply with the filing requirement. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. Investors in securities listed on NASDAQ are entitled to assume that the companies of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934. In this case, however, investors did not have access to accurate financial information regarding the company since January 2001.

Publication Date*: 7/31/2012

Identification Number: 653

Listing Council Decision 2004-6

Identification
Number 654

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company disclosed that its audit committee initiated an investigation, in connection with a continuing Securities and Exchange Commission investigation and at the request of its independent auditors, into the accounting and disclosures related to the company's relationship with one of its distributors. As such, when the company filed its Form 10-Q for the quarter ended September 30, 2003, the filing had not been reviewed by its independent auditors as required by SEC Rule 10-01(d) of Regulation S-X. As a result, the company's financial statements for that period could not be relied upon.

Determination: The company was properly delisted for failure to comply with the filing requirement. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. Investors in securities listed on NASDAQ are entitled to assume that the companies of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934.

Publication Date*: 7/31/2012

Identification Number: 654

Listing Council Decision 2004-5

Identification
Number 655

Rule 4310(c)(2)(B): For continued inclusion, the issuer shall maintain: (i) stockholders' equity of \$2.5 million; (ii) market value of listed securities of \$35 million; or (iii) net income from continuing operations of \$500,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

Issue: The company, a Foreign Private Issuer, no longer satisfied the stockholders' equity requirement. The company planned to regain compliance by acquiring a similar business, reporting income, raising additional equity from a private placement, the exercise of warrants by warrant holders, and the conversion of debt into equity by note holders.

Determination: The company was properly delisted for failure to comply with the stockholders' equity requirement. The company did not provide any definitive documentation or timetable to indicate when the company expected to achieve its plan. The company had been non-compliant for approximately fifteen months and still had not made a public filing demonstrating compliance. The company had not filed any reports on Form 6-K or issued any press releases that evidenced that the acquisition had closed, and the company had not provided any specific information or documentation to demonstrate that it had stemmed its current reported losses and would be able to generate income in the near or long term. Furthermore, there was uncertainty as to whether the holders of the warrants or notes would choose to exercise their rights, and if so, the timing of such exercises or conversions.

Publication Date*: 7/31/2012

Identification Number: 655

Listing Council Decision 2004-4

Identification
Number 656

Relevant Facts: After appearing before a Panel, the company was granted an exception that required the company to demonstrate stockholders' equity of \$2,500,000 in its next periodic filing. During the exception period, the company was also required to provide the Panel with prompt notification of any significant events that occurred, and should there be a material change in the company's financial or operational character, the Panel reserved the right to reconsider the terms of the exception. The company made the required public filing, and the Panel determined that the company had met the terms of the exception and placed the company back into compliance. Later that year, in a Form 8-K filing, the company disclosed that, during the exception period, it had discovered an overstatement of certain balance sheet items included in its previously filed financial statements, which led to an inquiry by management that was subject to oversight by the company's audit committee.

Rule 4310(c)(2)(B): For continued inclusion, the issuer shall maintain: (i) stockholders' equity of \$2.5 million; (ii) market value of listed securities of \$35 million; or (iii) net income from continuing operations of \$500,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

Issue: The company no longer satisfied the stockholders' equity requirement or its alternatives. The company planned to regain compliance by raising \$1,300,000 of additional equity from a private placement and from the conversion of debt into equity by note holders.

Determination: The company's Form 10-Q for the quarter ended October 31, 2003, which was filed after being delisted, reflected stockholders' equity of \$1,900,000. As such, the company did not demonstrate compliance with the stockholders' equity requirement. Even if the additional equity of \$1,300,000 from the private placement and the debt to equity conversion was included in the calculation of stockholders' equity, given the company's history of losses, the company would have been non-compliant at the date of the Listing Council's consideration. In analyzing whether a company will be able to regain and sustain compliance with the stockholders' equity requirement over the long term, the Listing Council reviews the company's recent losses and how such losses would affect stockholders' equity over the next 12-month period. Accordingly, the company did not demonstrate sustainable compliance.

* * *

Rule 4330(c): NASDAQ may request any additional information or documentation, public or non-public, deemed necessary to make a determination regarding a security's initial or continued inclusion, including, but not limited to, any material provided to or received from the Commission or other appropriate regulatory authority. Information requested pursuant to this subparagraph shall be submitted within a reasonable period. An issuer may be delisted if it fails to provide such information. An issuer may also be delisted if any communication to NASDAQ contains a material misrepresentation or omits material information necessary to make the communication to NASDAQ not misleading.

Issue: The company did not inform the Panel that it had an overstatement of certain balance sheet items included in its previously filed financial statements. The Panel relied upon those financial statements in determining that the company had demonstrated compliance.

Determination: The company was properly delisted based upon a failure to provide information relating to the accounting issues and the investigations in violation of Listing Rule 4330(c), as well as the requirements of the Panel's decision.

Publication Date*: 7/31/2012

Identification Number: 656

Listing Council Decision 2004-2

Identification
Number 658

Rule 4310(c)(2)(B): For continued inclusion, the issuer shall maintain: (i) stockholders' equity of \$2.5 million; (ii) market value of listed securities of \$35 million; or (iii) net income from continuing operations of \$500,000 in the most recently completed fiscal year or in two of the last three most recently completed fiscal years.

Issue: The company was not able to demonstrate net income of \$500,000 in its most recently completed fiscal year or in two of the last three most recently completed fiscal years, or comply with any of the other alternatives in the Rule. The company was able to demonstrate net income above \$500,000 for its first quarter of the current year. As such, the Panel issued an exception that allowed the company to remain listed.

Determination: The Listing Council affirmed the Panel's decision on other grounds. During the pendency of the Listing Council's review, the company demonstrated compliance with the \$35,000,000 market value of listed securities alternative of the Rule. As such, the company was allowed to remain listed. The Listing Council overturned the Panel's grant of an exception from the net income test based on the results from the first quarter of the company's current fiscal year. The application of the net income alternative in the Rule requires a historical demonstration of net income of \$500,000, in either the most recently completed fiscal year or in two of the last three most recent fiscal years. Companies cannot comply with the net income alternative of the Rule based on the financial results of a partially completed fiscal year.

Publication Date*: 7/31/2012

Identification Number: 658

Listing Council Decision 2004-1

Identification
Number 659

Rule 4310(c)(14): The issuer shall file with NASDAQ three (3) copies of all reports and other documents filed or required to be filed with the Commission. This requirement is considered fulfilled for purposes of this paragraph if the issuer files the report or document with the Commission through the Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. An issuer that is not required to file reports with the Commission shall file with NASDAQ three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with NASDAQ on or before the date they are required to be filed with the Commission or appropriate regulatory authority. Annual reports filed with NASDAQ shall contain audited financial statements.

Issue: The company filed its Form 10-Q for the quarter ended June 30, 2003, however, the filing had not been reviewed by its independent auditors, as required by SEC Rule 10-01(d) of Regulation S-X. As a result, the company's financial statements for that period could not be relied upon.

Determination: The company was properly delisted for failure to comply with the filing requirement. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. Investors in securities listed on NASDAQ are entitled to assume that the companies of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934.

* * *

Rule 4350(i)(1)(D)(ii): Each issuer shall require shareholder approval ... prior to the issuance of designated securities in connection with a transaction other than a public offering involving: ... (ii) the sale, issuance or potential issuance by the company of common stock (or securities convertible into or exercisable common stock) equal to 20% or more of the common stock or 20% of more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.

Issue: The company violated Listing Rule 4350(i)(1)(D)(ii) by issuing greater than 20% of its pre-transaction total shares outstanding at a discount to the market price. The offering consisted of 9,500,000 shares of common stock, plus the potential issuance of 4,750,000 shares of common stock resulting from the exercise of the warrants. As such, the aggregate issuance would be 14,250,000 shares, or 22% of the 63,085,854 total shares outstanding on a pre-transaction basis, at below the market price based on a blended average of the common stock and warrant exercise prices.

Determination: The company was properly delisted for failure to comply with the shareholder approval requirement. Although the company stated that it was prepared to cure its shareholder approval violation, a period of approximately two and one-half months had passed, and the violation still had not been cured at the time of the Listing Council's consideration.

Publication Date*: 7/31/2012

Identification Number: 659

Listing Council Decision 2003-20

Identification
Number 660

Rule 4310(c)(14): The issuer shall file with NASDAQ all reports and other documents required to be filed with the Securities and Exchange Commission ("SEC"). Annual reports filed must contain audited financial statements.

Issue: The company failed to file its Form 10-K for its fiscal year end or its first and second quarter Forms 10-Q because it was in the process of restating its prior financial statements. In connection with the restatement, the company was also performing an internal investigation. As a result of the restatements, the company's financial statements and audit report for the previous fiscal year could not be relied upon. At the time of the Listing Council's decision, the company had been out of compliance with the filing requirement for six months and had still not made the necessary filings.

Determination: The company was properly delisted for failure to comply with the filing requirement. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. Investors in securities listed on NASDAQ are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934. In this case, however, investors did not have access to accurate financial information regarding the company for the previous fiscal year and the subsequent interim periods. Furthermore, in the absence of accurate and reliable financial statements, Staff was unable to determine if the company was in compliance with all of the NASDAQ continued listing requirements. With respect to the company's request to be allowed to relist under continued listing criteria after it makes its periodic filings and restatements, the Listing Council notes that under Listing Rule 4330 (e), a security that has been terminated from NASDAQ must meet the initial listing requirements before re-inclusion. Because the Panel appropriately delisted the company's securities, the initial listing requirements are the correct standard for a review of the company's listing qualifications at such time the company seeks to be.

Publication Date*: 7/31/2012

Identification Number: 660

Listing Council Decision 2003-19

Identification
Number 661

Rule 4310(c)(14): The issuer shall file with NASDAQ all reports and other documents required to be filed with the Securities and Exchange Commission ("SEC"). Annual reports filed must contain audited financial statements.

Issue: After the company disclosed that it had replaced its auditor, would need to restate its prior period financial statements, and would delay filing its Form 10-K as a result of its audit committee's investigation into accounting improprieties, the Panel delisted the company's securities based on a filing deficiency. The company subsequently filed amended prior period financial statements and its Forms 10-K and 10-Q, which were deficient for a period of approximately 2 and 1 ½ months, respectively, as a result of accounting restatements related to an overstatement of the company's revenue and net income.

Determination: The Panel's decision was reversed because the company made the required filings and received an unqualified independent auditors' opinion. However, there was insufficient record evidence to determine whether public interest concerns existed, particularly given the extent of the restatements, an investigation being conducted by the SEC, and the result of an internal investigation, which concluded that the company had engaged in fraudulent accounting. Therefore, the matter was remanded to the Panel with instructions to further remand to Staff for an investigation. Thereafter, the Panel was required to issue a decision making a determination as to whether public interest concerns existed. If the Panel determined that no public interest concerns existed and there were no other

deficiencies, the Panel was instructed to promptly relist the company's securities.

Publication Date*: 7/31/2012

Identification Number: 661

Listing Council Decision 2003-18

Identification
Number 662

Rule 4310(c)(2)(B): \$2,500,000 shareholders' equity requirement, or its alternatives, for continued listing on the SmallCap Market.

Issue: The company did not meet the minimum shareholders' equity requirement or its alternatives. The company planned to regain compliance by acquiring another company and completing a private placement.

Determination: The company was properly delisted for failure to comply with the shareholders' equity requirement. The company did not provide any definitive documentation to evidence compliance with the shareholders' equity requirement. Furthermore, even if the company completed their plan, it had a history of losses. In analyzing whether a company will be able to regain and sustain compliance with the shareholders' equity requirement over the long term, the Listing Council reviews the company's recent losses and how such losses would affect shareholders' equity over the next 12-month period. As such, the company did not demonstrate sustainable compliance.

Publication Date*: 7/31/2012

Identification Number: 662

Listing Council Decision 2003-17

Identification
Number 663

Rule 4310(c)(2)(B): \$2,500,000 shareholders' equity requirement, or its alternatives, for continued listing on the SmallCap Market.

Issue: At the time of the Panel decision, the company did not meet the minimum shareholders' equity requirement or its alternatives, and its plan to raise additional equity was not sufficiently definitive. The company requested that the Panel include its contract and tax assets, which were not fully reflected on the company's balance sheet under generally accepted accounting principles, in the calculation of shareholders' equity. In the alternative, the company was considering a plan to effect a quasi-reorganization, which would allow a fresh start restructuring of its shareholders' equity.

Determination: The company was properly delisted for failure to comply with the shareholders' equity requirement. The Panel's unwillingness to consider the inclusion of assets not captured on the company's balance sheet was appropriate. Further, the company did not provide documentation to evidence its ability to restructure its shareholders' equity in the near term.

Publication Date*: 7/31/2012

Identification Number: 663

Listing Council Decision 2003-16

Identification
Number 664

Rule 4310(c)(2)(B): \$2,500,000 shareholders' equity requirement, or its alternatives, for continued listing on the SmallCap Market.

Issue: The company did not meet the minimum shareholders' equity requirement or its alternatives. The company planned to regain compliance by restructuring agreements with third parties to minimize the treatment of those agreements as long-term liabilities; improving its earnings through accelerated expense reductions and revenue generation from a price increase; and pursuing a settlement related to pending litigation.

Determination: The company was properly delisted for failure to comply with the shareholders' equity requirement. The company did not provide any definitive documentation or timetable to indicate when the company expected to achieve its plan. Furthermore, the company had a history of losses. In analyzing whether a company will be able to regain and sustain compliance with the shareholders' equity requirement over the long term, the Listing Council reviews the company's recent losses and how such losses would affect shareholders' equity over the next 12-month period.

Publication Date*: 7/31/2012

Identification Number: 664

Listing Council Decision 2003-15

Identification
Number 665

Rule 4310(c)(14): The issuer shall file with NASDAQ all reports and other documents required to be filed with the Securities and Exchange Commission ("SEC"). Annual reports filed must contain audited financial statements.

Issue: The company had not filed its Form 10-K or the past two Forms 10-Q and did not provide an estimated date for filing these SEC

reports.

Determination: The company was properly delisted for failure to comply with the filing requirement. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. Investors in securities listed on NASDAQ are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934. In this case, however, investors did not have access to accurate financial information regarding the company for more than one year. Furthermore, in the absence of accurate and reliable financial statements, Staff was unable to determine if the company was in compliance with all of the NASDAQ continued listing requirements.

* * *

Rule 4310(c)(4): \$1 minimum bid price requirement for continued listing on the SmallCap Market.

Issue: The bid price of the company's common stock was below \$1 for approximately 21 months. The company planned to effect a 1-for-4 reverse stock split after its annual meeting.

Determination: The company was properly delisted for failure to comply with the minimum bid price requirement. Even if the company effected its planned 1-for-4 reverse stock split, its share price would still be below \$1.

* * *

Rule 4350(g): Issuers are required to solicit proxies and provide proxy statements for all meetings of shareholders.

Issue: Although the company recently filed a definitive proxy statement with the SEC, it previously had not filed a proxy statement, or solicited proxies, since its securities were listed on NASDAQ in 2000.

Determination: The company was properly delisted for failure to comply with the proxy solicitation requirements.

* * *

Rule 4310(c)(7): \$1,000,000 market value of publicly held shares requirement for continued listing.

Issue: Based on information in the company's information statement and its most recent stock price, its market value of publicly held shares was less than \$1,000,000. The company believed its stock was undervalued.

Determination: The company was properly delisted for failure to comply with the market value of publicly held shares requirement.

Publication Date*: 7/31/2012

Identification Number: 665

Listing Council Decision 2003-14

Identification
Number 666

Rule 4310(c)(14): The issuer shall file with NASDAQ all reports and other documents required to be filed with the Securities and Exchange Commission ("SEC"). Annual reports filed must contain audited financial statements.

Issue: After the company disclosed that it would delay filing its Form 10-K as a result of its audit committee's investigation into accounting improprieties, the Panel delisted the company's securities based on a filing deficiency. The company subsequently filed its Forms 10-K and 10-Q, which were deficient for a period of approximately 4 and 2 ½ months, respectively, as a result of accounting restatements related to revenue recognition adjustments.

Determination: The Panel's decision was reversed because the company made the required filings and received an unqualified independent auditors' opinion. However, there was insufficient record evidence to determine whether public interest concerns existed, particularly given the extent of the restatements, an investigation being conducted by the SEC, and the result of an internal investigation, which concluded that the company had engaged in fraudulent accounting. Therefore, the matter was remanded to the Panel with instructions to further remand to Staff for an investigation. Thereafter, the Panel was required to issue a decision making a determination as to whether public interest concerns existed. If the Panel determined that no public interest concerns existed and there were no other deficiencies, the Panel was instructed to promptly relist the company's securities.

* * *

Rule 4350(d)(2): An issuer must have an audit committee of at least three members, comprised solely of independent directors.

Issue: Two members of the audit committee served as interim presidents for approximately 45 days.

Determination: There was insufficient record evidence to determine whether the audit committee members were independent; therefore, the matter was remanded to the Panel. The company must provide the Panel with information as to whether such members received compensation as defined in the Rule 10A-3(b)(1)(ii)(A) of the Securities Exchange Act of 1934 and whether such members otherwise comply with NASDAQ Marketplace Listing Rule 4350(d)(2). If the audit committee members do not meet the criteria pursuant to the aforementioned rules, the company must submit a plan to the Panel to rectify the audit committee deficiency. If the Panel determines that the company's only deficiency is the audit committee requirement, the Panel must provide the company an opportunity to cure the deficiency.

Publication Date*: 7/31/2012

Identification Number: 666

Listing Council Decision 2003-13

Identification
Number 667

Rule 4310(c)(2)(B): \$2,500,000 shareholders' equity requirement, or its alternatives, for continued listing on the SmallCap Market.

Issue: At the time of the Panel decision, the company did not meet the minimum shareholders' equity requirement or its alternatives and its plan to raise additional equity was not sufficiently definitive. The company planned to regain compliance by completing private placements, converting debt to equity and earning a fee upon entering into a license agreement. Following the Panel's delisting decision, the company's stock price increased, which caused the company to meet the \$35 million minimum market value of listed securities continued listing requirement, an alternative to the shareholders' equity requirement.

Determination: The company had been deficient with the shareholders' equity requirement or its alternatives for more than eight months. Under Listing Rule 4330(e), a security that has been terminated from NASDAQ must meet the initial listing requirements before reinclusion. Because the Panel appropriately delisted the company's securities from the SmallCap Market, the initial listing requirements provide the correct standard for a review of the company's listing qualifications. The company, however, did not meet the National Market initial listing requirements.

Publication Date*: 7/31/2012

Identification Number: 667

Listing Council Decision 2003-12

Identification
Number 668

Rule 4310(c)(14): The issuer shall file with NASDAQ all reports and other documents required to be filed with the Securities and Exchange Commission ("SEC"). Annual reports filed must contain audited financial statements.

Issue: After the company disclosed that it would delay filing its Form 10-K as a result of its audit committee's investigation into accounting improprieties, the Panel delisted the company's securities based on a filing deficiency. The company subsequently filed its Form 10-K and Form 10-Q, which were deficient for a period of approximately five and three months, respectively, as a result of accounting restatements related to revenue recognition adjustments.

Determination: The Panel's decision was reversed because the company made the required filings, received an unqualified independent auditors' opinion and was not deficient with any other NASDAQ requirement. However, there was insufficient record evidence to determine whether public interest concerns existed, particularly given the extent of the restatements and a formal investigation being conducted by the SEC. Therefore, the matter was remanded to the Panel with instructions to further remand to Staff for an investigation. Thereafter, the Panel was required to issue a decision making a determination as to whether public interest concerns existed. If the Panel determined that no public interest concerns existed and there were no other deficiencies, the Panel was instructed to promptly relist the company's securities.

Publication Date*: 7/31/2012

Identification Number: 668

Listing Council Decision 2003-11

Identification
Number 669

Rules 4450(a)(3) and 4450(b)(1): \$10,000,000 shareholders' equity, or its alternatives, \$50,000,000 market value of listed securities or \$50,000,000 total assets and \$50,000,000 total revenue requirements, for continued listing on the National Market.

Issue: The company no longer satisfied the shareholders' equity requirement for continued inclusion on the National Market and was transferred to the SmallCap Market. The company stated it would attempt to restructure its preferred stock so that it would be treated as equity on the balance sheet under applicable accounting rules. It also intended to raise proceeds in a private equity offering and explore potential development partner fees. Furthermore, it had ceased its stock buy back program and was cutting down on its expenses to reduce its net losses.

Determination: The company was properly delisted from the National Market for failure to comply with the minimum shareholders' equity requirement. The company had been below \$10,000,000 for more than nine months at the time of the Listing Council's determination. In addition, the company has not raised sufficient additional equity or provided any definitive evidence of its plan to increase its shareholders' equity. The company's shareholders' equity would also be negatively impacted as a result of its history of losses. The Panel properly determined that, although the company did not comply with all of the requirements for continued listing on the National Market, it did comply with all of the requirements for continued listing on the SmallCap Market

Publication Date*: 7/31/2012

Identification Number: 669

Listing Council Decision 2003-10

Identification
Number 670

Rule 4350(i)(1)(A): issuers must obtain shareholder approval for an arrangement made pursuant to which stock may be acquired by officers and directors. Shareholder approval is not required if the amount of securities which may be issued under the arrangement does not exceed the lesser of 1% of the number of shares of common stock, 1% of the voting power outstanding or 25,000 shares.

Issue: The company violated Listing Rule 4350(i)(1)(A) by issuing shares in private placements to Section 16 officers and directors at a discount to market price. The discount was approximately 1%, which amounted to \$1,000. The Panel issued a decision requiring the Section 16 officers and directors, who had received a discount in the private placements, to pay the difference between what they had paid and the market price of the company's common stock on the date of issuance.

Determination: The company may either restructure the transaction such that the Section 16 officers and directors provide additional consideration to the company or rescind the violative transactions. Although the company has proposed to seek shareholder ratification of the violative transactions in connection with its annual meeting, shareholder ratification of a violative transaction is not an acceptable substitute for prior shareholder approval. The Panel's decision was reversed to the extent it permitted the company to address the shareholder approval violation by requiring insiders to pay the market price on the date of issuance. This allows insiders to eliminate their investment risk by electing to opt out of the transaction if the market price subsequently decreases. The company should adjust the price to the greater of the market value as of the date of the binding agreement or the date NASDAQ first notified the company of the deficiency.

Publication Date*: 7/31/2012

Identification Number: 670

Listing Council Decision 2003-9

Identification
Number 671

Rule 4310(c)(2)(B): \$2,500,000 shareholders' equity requirement, or its alternatives, for continued listing on the SmallCap Market.

Issue: The company no longer satisfied the shareholders' equity requirement. The company expected to receive funding, which it believed would have a material impact on the company's ability to complete manufacturing and shipment of additional product and result in additional profits.

Determination: The company was properly delisted for failure to comply with the shareholders' equity requirement. The company's assertion that additional funding would increase profits was not a definitive plan to evidence that the company can regain compliance with the shareholders' equity requirement. In addition, the company had a history of losses.

Publication Date*: 7/31/2012

Identification Number: 671

Listing Council Decision 2003-8

Identification
Number 672

Rules 4300 and 4330(a)(3): NASDAQ may exercise its discretion in applying additional or more stringent criteria for initial or continued inclusion or suspend or terminate the inclusion of an otherwise qualified security if NASDAQ deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest.

Issue: The company had not timely filed its Form 10-K because it was in the process of restating its prior financial statements. In

connection with the restatement, the company was also performing an internal investigation. The Panel granted the company a one month extension to file its Form 10-K and concluded "there appears to have been no intent to mislead or defraud the investing public."

Determination: There was insufficient record evidence for the Panel to reach a conclusion on the public interest issue, since the internal investigation was not yet complete. In the absence of the results of this investigation, the Panel's conclusion was premature. The Panel's decision was vacated to the extent it held that there appeared to have been no intent to mislead or defraud the investing public.

Publication Date*: 7/31/2012

Identification Number: 672

Listing Council Decision 2003-7

Identification
Number 673

Rules 4450(a)(3) and 4450(b)(1): \$10,000,000 shareholders' equity, or its alternatives, \$50,000,000 market value of listed securities or \$50,000,000 total assets and \$50,000,000 total revenue requirements, for continued listing on the National Market.

Issue: The company no longer satisfied the shareholders' equity requirement for continued inclusion on the National Market and was transferred to the SmallCap Market. The company asserted that it would be in compliance with the National Market shareholders' requirement after it completed a private placement, and it would be able to maintain compliance throughout 2003 according to its financial projections.

Determination: The company was properly transferred to the SmallCap Market for failure to comply with the shareholders' equity requirement on the National Market. Following the consummation of the private transaction, it appeared that the company's shareholders' equity was approximately \$11,000,000. However, the company had been deficient with the shareholders' equity requirement for more than six months. Under Listing Rule 4330(e), a security that has been terminated from NASDAQ must meet the initial listing requirements before re-inclusion. Because the Panel appropriately delisted the company's securities from the National Market, the initial listing requirements provide the correct standard for a review of the company's listing qualifications. The company, however, did not meet the National Market initial listing requirements. Furthermore, even under the National Market continued listing requirements, it appeared that the company would be unable to maintain long term compliance with the minimum shareholders' equity compliance given its history of losses. Although the company projected shareholders' equity meeting the National Market continued listing requirements throughout 2003, the company did not provide sufficient information in its projections to predict an accurate rate of monthly income or loss. For example, the company did not provide detailed assumptions for its projections, such as nonrecurring costs or revenues. Based on its net losses for 2002, the company would soon fall below the \$10,000,000 shareholders' equity requirement.

Publication Date*: 7/31/2012

Identification Number: 673

Listing Council Decision 2003-6

Identification
Number 674

Rule 4310(c)(14): The issuer shall file with NASDAQ all reports and other documents required to be filed with the Securities and Exchange Commission ("SEC"). Annual reports filed must contain audited financial statements.

Issue: The company failed to file its first and second quarter Forms 10-Q as a result of an investigation and accounting restatements. As a result of the restatements, the company's financial statements and audit report for the previous fiscal year could not be relied upon. At the time of the Listing Council's decision, the company had been out of compliance with the filing requirement for approximately five months and had still not made the necessary filings.

Determination: The company was properly delisted for failure to comply with the filing requirement. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. Investors in securities listed on NASDAQ are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934. In this case, however, investors did not have access to accurate financial information regarding the company for the previous fiscal year and the subsequent interim periods. Furthermore, in the absence of accurate and reliable financial statements, Staff was unable to determine if the company was in compliance with all of the NASDAQ continued listing requirements.

Publication Date*: 7/31/2012

Identification Number: 674

Listing Council Decision 2003-5

Identification
Number 675

Rule 4310(c)(14): The issuer shall file with NASDAQ all reports and other documents required to be filed with the Securities and Exchange Commission ("SEC"). Annual reports filed must contain audited financial statements.

Issue: The company was deficient in filing its Form 10-Q for a period of five months as a result of accounting restatements related to inventory shortfall adjustments.

Determination: Based on events occurring after the Panel's decision, the Panel's decision was reversed. The company filed its delinquent Form 10-Q and completed its internal control investigation. The company made reasonable efforts to solve the inventory control issues and provided consistent and adequate disclosure to investors through press releases and SEC filings. Furthermore, the company instituted remedial measures to improve its internal controls and prevent future inventory problems by hiring more experienced management personnel and a new controller, installing a new accounting system and conducting physical inventory counts. The company must make all of its public filings for the periods ending in the 12-month period from the date of the decision with the SEC in a timely manner, including any permitted extensions, pursuant to Rule 12b-25. If the company fails to timely file its public reports during this period, its securities will be immediately delisted from The NASDAQ Stock Market without a right to further hearings.

Publication Date*: 7/31/2012

Identification Number: 675

Listing Council Decision 2003-4

Identification
Number 676

Rule 4310(c)(2): \$2,500,000 shareholders' equity requirement, or its alternatives, for continued listing on the SmallCap Market.

Issue: The company no longer satisfied the shareholders' equity requirement. The company asserted that it would regain compliance after it received financing in connection with a transaction with a potential partner. The company expected to consummate the transaction within three months. The company also planned to raise financing through a placement agent.

Determination: The company was properly delisted for failure to comply with the shareholders' equity requirement. The company had been deficient for approximately eight months and had not provided sufficient evidence to indicate that its proposed transaction would occur in the near term. There was no evidence in the record, and the company had not filed any reports on Form 8-K or issued any press releases, announcing that it received a term sheet or entered into a definitive agreement with the potential partner. In addition, the company had not provided any evidence or publicly announced that it raised any financing through its placement agent.

* * *

Rule 4310(c)(4): \$1 minimum bid price requirement for continued listing on the SmallCap Market.

Issue: The bid price of the company's common stock was below \$1. The company believed its common stock price would increase after it received financing in connection with its proposed transaction. Even though the company had been non-compliant with the bid price requirement for one year, it indicated that it would only implement a reverse stock split if its plan did not improve its bid price.

Determination: The company was properly delisted for failure to comply with the minimum bid price requirement. The company had been deficient for approximately one year. Anticipated favorable market reaction is not a definitive plan to regain compliance with the minimum bid price requirement. Furthermore, the company had not filed a preliminary proxy statement to effect a reverse stock split.

Publication Date*: 7/31/2012

Identification Number: 676

Listing Council Decision 2003-3

Identification
Number 677

Rule 4450(b)(4): \$3 minimum bid price requirement for continued listing on the National Market under Maintenance Standard 2.

Rule 4450(b)(3): \$15,000,000 market value of publicly held shares requirement for continued listing on the National Market under Maintenance Standard 2.

Issue: At the time of the Panel's decision, the company's common share closing bid price was below \$3, and its market value of publicly held shares was below \$15,000,000. The company also did not meet the requirements for continued inclusion on the SmallCap Market.

Determination: The Panel's determination to delist the company's securities from The NASDAQ Stock Market was appropriate at the time of the decision. Based on events occurring after the Panel's decision, the Panel's decision was reversed. Under Listing Rule 4330(e), a security that has been terminated from NASDAQ must meet the initial listing requirements before re-inclusion. Approximately two weeks after the Panel's decision, the company's stock price increased above \$1. The company also met all of the initial listing requirements for the National Market, except for the \$5 minimum bid price requirement, as set forth in Listing Rule 4420, and the initial

listing requirements for the SmallCap Market, except for the \$4 minimum bid price requirement, as set forth in Listing Rule 4310(c)(4). The company's closing bid price had been above \$1 per share for approximately two months; therefore, the company would still have been

within the 180-day bid price grace period afforded to SmallCap issuers, as set forth in Listing Rule 4310(c)(8)(D). Accordingly, the Listing Council waived the \$4 initial listing bid price requirement and instead required that the company meet the \$1 continued listing bid price requirement on the SmallCap Market. The company was not provided with an exception to the \$5 minimum bid price initial listing requirement on the National Market, because it was non-compliant for nine months with the \$3 minimum bid price continued listing requirement. The matter was remanded to the Panel with instruction to relist the company's securities on the SmallCap Market effective upon the completion of Staff's review of the company's application. This process requires the company to: (1) file an application for new listing, (2) pay all applicable listing fees, and (3) evidence compliance with all requirements for initial listing on the SmallCap Market, except that the company must demonstrate a minimum bid price of \$1 instead of \$4. Furthermore, at the time of Staff's review of the application, there must be no adverse developments or public interest reasons justifying denial of listing.

Publication Date*: 7/31/2012

Identification Number: 677

Listing Council Decision 2003-2

Identification
Number 678

Rules 4450(a)(3) and 4450(b)(1): \$10,000,000 shareholders' equity, or its alternatives, \$50,000,000 market value of listed securities or \$50,000,000 total assets and \$50,000,000 total revenue requirements, for continued listing on the National Market.

Rule 4450(f): NASDAQ may suspend or terminate an issuer's securities if the issuer files under any of the sections of the Bankruptcy Act, unless it is determined that the public interest and the protection of investors would be served by continued designation.

Issue: The company no longer satisfied the shareholders' equity requirement for the National Market. The company had filed a voluntary bankruptcy petition and reflected a shareholders' deficit for approximately one year. At the time of the Panel's decision, it was uncertain whether the company would conclude its restructuring proceedings in the near term.

Determination: The Panel's determination to delist the company's securities from The NASDAQ Stock Market was appropriate at the time of the decision. Based on events occurring after the Panel's decision, the Panel's decision was reversed. The company provided evidence that it consummated its restructuring process and emerged from the bankruptcy proceedings. Under Listing Rule 4330(e), a security that has been terminated from NASDAQ must meet the initial listing requirements before re-inclusion. Following its restructuring, the company did not meet the National Market initial listing requirements, but did meet all of the SmallCap Market initial listing requirements, except for the \$4 minimum bid price. However, because the company was below the \$1 minimum bid price requirement for continued listing on the National Market for approximately three months, it was still within the 90-day grace period afforded to National Market issuers, as set forth in Listing Rule 4450(e)(2). Accordingly, the Listing Council waived the \$4 bid price requirement for initial listing on the SmallCap Market and instead required that the company meet the \$1 continued listing bid price requirement. The matter was remanded to the Panel with instruction to relist the company's securities on the SmallCap Market, effective upon the completion of Staff's review of the company's application. This process requires the company to: (1) file an application for new listing, (2) pay all applicable listing fees, and (3) evidence compliance with all requirements for initial listing on the SmallCap Market, except that the company must demonstrate a minimum bid price of \$1 instead of \$4. Furthermore, at the time of Staff's review of the application, there must be no adverse developments or public interest reasons justifying denial of listing.

Publication Date*: 7/31/2012

Identification Number: 678

Listing Council Decision 2003-1

Identification
Number 679

Rule 4310(c)(4): \$1 minimum bid price requirement for continued listing on the SmallCap Market.

Issue: The bid price of the company's common stock was below \$1 for more than one year. The company stated it had received board approval for a reverse stock split and had prepared preliminary proxy materials to be filed with the Securities and Exchange Commission.

Determination: The company was properly delisted for failure to comply with the minimum bid price requirement. The company did not demonstrate the ability to regain compliance in the near term or to maintain compliance over the long term. The company had not filed a preliminary proxy statement seeking shareholder approval for a reverse stock split to cure the bid price deficiency and did not expect to do so until it completed negotiations for the sale of one of its businesses.

* * *

Rule 4310(c)(2): \$2,500,000 shareholders' equity requirement, or its alternatives, for continued listing on the SmallCap Market.

Issue: The company no longer satisfied the shareholders' equity requirement. The company planned to regain compliance by disposing of one of its businesses, converting debt to equity and raising additional funds.

Determination: The company was properly delisted for failure to comply with the shareholders' equity requirement. The company did not provide any definitive documentation or timetable to indicate when the company expected to achieve its plan. Furthermore, the company had not filed a proxy statement to obtain shareholder approval for certain debt to equity conversions, as represented by the company during the Panel hearing.

* * *

Rule 4310(c)(13): NASDAQ annual and listing of additional shares fees.

Issue: The company failed to pay NASDAQ annual and listing of additional shares fees.

Determination: The company was properly delisted for failure to pay the requisite annual and listing of additional shares fees. The annual fee was outstanding for more than six months, and the listing of additional shares fee was outstanding for more than one year.

Publication Date*: 7/31/2012

Identification Number: 679

Listing Council Decision 2002-10

Identification
Number 680

Rules 4300 and 4330(a)(3): NASDAQ may exercise its discretion in applying additional or more stringent criteria for initial or continued inclusion or suspend or terminate the inclusion of an otherwise qualified security if NASDAQ deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest.

Issue: The company existed without an operating business for approximately one year at the time of the Listing Council's consideration of this matter and reflected zero revenues for nine months. The company employed less than ten people, and the expenses comprising its annual burn rate were compensation, occupancy cost, public company cost, legal fees and insurance. The company stated in public filings that it might be deemed an investment company because it owned investment securities with a value exceeding 40% of its total assets. However, if necessary, it planned to decrease its holdings in investment securities to avoid becoming subject to the requirements of the Investment Company Act of 1940. The company asserted that its tangible business operations were comprised of its interests in other entities, one of which it actively managed by attending board and weekly meetings. The company also noted that it held a substantial note receivable and cash.

Determination: The company was delisted based on public interest concerns that it was a public shell. The company did not have any direct management authority or a controlling interest in its most significant investment, and attending board and weekly regulatory meetings alone do not constitute tangible business operations. Its other most significant investment represented less than 1% of the company's total assets. Furthermore, the company did not provide any definitive documentation to evidence that it planned to acquire any complementary operations. Investors would be afforded additional protections if the company registered as an investment company, because it would be subject to regulations regarding its operations, investments, capital structure, governance, and reporting of its results of operations. A company that is not registered as an investment company and has no tangible business operations may be considered a public shell even if it holds cash and securities, because such companies are subject to market abuses or other violative conduct detrimental to the interests of the investing public. Furthermore, prospective investors in such a company's securities are unable to determine the type of business in which they are investing. Investors' interest in the company's securities are based solely on existing investments, and the possibility of entering into investments, mergers, and acquisitions with other companies that have not as yet been identified.

Publication Date*: 7/31/2012

Identification Number: 680

Listing Council Decision 2002-9

Identification
Number 681

Rule 4330(f): An issuer must apply for initial inclusion following a transaction whereby the issuer combines with a non-NASDAQ entity, resulting in a change of control of the issuer and potentially allowing the non-NASDAQ entity to obtain a NASDAQ listing. In determining whether a reverse merger has occurred, NASDAQ will consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the issuer. NASDAQ will also consider the nature of the businesses and the relative size of the NASDAQ issuer and non-NASDAQ entity.

Issue: Following a merger, shareholders of the non-NASDAQ entity controlled approximately 40% of the company. Former directors and

officers of the company, who owned approximately 65% of the company prior to the transaction, owned approximately 23% after the transaction. The shareholders of the non-NASDAQ entity serving as directors and executive officers of the company owned no shares of the company prior to the transaction, but beneficially owned approximately 40% after the transaction. Such shareholders as a group constituted the single largest shareholder of the company. Following the transaction, two out of five directors on the board resigned and were replaced by shareholders of the non-NASDAQ entity, and four out of the seven executive officers listed in the company's proxy statement were shareholders of the non-NASDAQ entity. The company asserted that no change of control occurred because shareholders of the non-NASDAQ entity did not acquire majority control of the company's common stock or board. The company also asserted that the financial structure and the relative sizes of the non-NASDAQ entity and the company did not indicate a reverse merger.

Determination: The company was properly delisted because it entered into a transaction that resulted in a reverse merger, and it did not meet the initial listing standards following the reverse merger. Even though the shareholders of the non-NASDAQ entity did not have majority control of the company, a significant change in the ownership structure had occurred. The transaction with the non-NASDAQ entity resulted in a change of control and significant changes to the company's management, board of directors, voting power, ownership, financial structure and business. The company's business was not similar to the non-NASDAQ entity, and the company's financial structure adversely changed as a result of the transaction. The company distributed substantial capital dividends shortly before the transaction and recorded significant goodwill as a result of the transaction. The company did not meet the requirements for initial listing on the SmallCap Market.

* * *

Rule 4310(c)(4): \$1 minimum bid price requirement for continued listing on the SmallCap Market.

Issue: The bid price of the company's common stock was below \$1.

Determination: The company was properly delisted for failure to comply with the minimum bid price requirement. The company stated that it wanted to finalize the reverse merger issue before it resumed its investment in an aggressive investor relations program in order to regain compliance with the minimum bid price requirement. Because the company did not have a definitive plan to regain compliance in the near term, it would be inappropriate to relist the company's securities. In this regard, the Securities and Exchange Commission has determined that investors are entitled to assume that the securities on NASDAQ meet the listing requirements.*

* See JJFN Services, Inc., Securities Exchange Act Rel. No. 39343 (November 21, 1997) (citing Tassaway, Inc., Securities Exchange Act Rel. No. 34151 (March 13, 1975)).

Publication Date*: 7/31/2012

Identification Number: 681

Listing Council Decision 2002-8

Identification
Number 682

Rule 4310(c)(2): \$2,500,000 shareholders' equity requirement, or its alternatives, for continued listing on the SmallCap Market.

Issue: Following the Panel's February decision to delist the company's securities based on a deficiency with the shareholders' equity requirement, the company regained compliance through the completion of several equity offerings. In July, the Listing Council issued a decision reversing the Panel's decision to delist the company's securities and remanded the matter to the Panel for further consideration, pursuant to an exception. Pursuant to its discretionary authority under Listing Rule 4300, the Listing Council determined that the company's public filings for the following quarter must reflect shareholders' equity exceeding the minimum \$2,500,000 continued listing requirement as a result of the company's history of operating losses. The company did not comply with the terms of the Listing Council's July decision.

Determination: In November, the Listing Council determined that the company's securities should not be relisted, based on its failure to comply with the shareholders' equity requirement, as set forth in the Listing Council's July decision.

* * *

Rule 4310(c)(4): \$1 minimum bid price requirement for continued listing on the SmallCap Market.

Issue: Pursuant to the Listing Council's July decision, the company was required to demonstrate a closing bid price of at least \$1 per share within 90 days of the decision. However, the company's bid price remained below \$1 during and after such period.

Determination: In November, the Listing Council determined that the company's securities should not be relisted, based on its failure to

comply with the terms of the Listing Council's July decision and the minimum bid price requirement.

* * *

Rule 4350(i)(1)(D): Shareholder approval requirement for a transaction other than an initial public offering involving the sale or issuance of common stock, or securities convertible into or exercisable for common stock, equal to 20% or more of the common stock or voting power outstanding before the issuance, for less than the greater of book or market value.

Issue: In its proxy statement, the company solicited shareholder approval for a non-specific transaction that set forth the maximum number of shares to be issued. The company disclosed in the proxy that such issuance might be at a discount to market and could exceed 20% of the company's outstanding common stock. Following shareholder approval of its proposal, the company issued preferred shares, but failed to provide in the transaction documents the maximum number of shares issuable in accordance with the shareholder proposal.

Determination: In November, the Listing Council determined that the company's securities should not be relisted, based on its failure to comply with the shareholder approval requirement. If shareholder approval for a transaction is necessary under NASDAQ rules, NASDAQ's policy requires that a company provide specific details to shareholders regarding the nature of the transaction; for example, the number of shares offered, the type of security being issued, the names of the investors and the purchase price. NASDAQ permits shareholder proposals for non-specific private placements, if shareholders have sufficient information to make a meaningful decision, including the maximum number of shares to be issued, the maximum dollar amount of the issuance, the maximum amount of discount (if any) to the market, and the time frame to complete the transaction (generally limited to three months). Although the company provided sufficient information to shareholders in the proxy statement, the transactional and corporate documents in the record on review did not evidence the maximum number of shares to be issued upon conversion of the preferred shares, as set forth in the shareholder proposal. Since the number of shares issuable upon conversion of the preferred shares potentially may exceed the maximum number set forth in the shareholder proposal, the company failed to comply with the shareholder approval requirements.

Publication Date*: 7/31/2012

Identification Number: 682

Listing Council Decision 2002-7	Identification Number 683
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Rules 4450(a)(3) and 4450(b)(1): \$4,000,000 net tangible assets/\$10,000,000 shareholders' equity, or its alternatives, the \$50,000,000 market value of listed securities/\$50,000,000 total assets and \$50,000,000 total revenue requirements for continued listing on the National Market.

Issue: The company no longer satisfied the net tangible assets/shareholders' equity continued listing requirement for the National Market. The company also did not comply with the alternative requirements for continued listing under Maintenance Standard 2 on the National Market, as set forth in Listing Rule 4450(b). The company did not submit a plan to regain compliance with the National Market requirements, but requested that it be granted the opportunity to list its common stock on the SmallCap Market. The company submitted an unaudited consolidated balance sheet, which reflected shareholders' equity exceeding the SmallCap Market continued listing requirement.

Determination: The company was properly delisted for failure to satisfy the net tangible assets/ shareholders' equity requirement for continued listing on the National Market. The company did not submit a definitive plan to regain compliance with the net tangible assets/shareholders' equity requirement or to maintain compliance over the long term. The company also did not provide evidence of its ability to sustain compliance with the shareholders' equity requirement for continued listing on the SmallCap Market in the near or long term and did not meet any of the alternatives for the shareholders' equity requirement, as set forth in Listing Rule 4310(c)(2)(B). The company would soon fall below the shareholders' equity requirement for continued listing on the SmallCap Market based on its projections and history of losses.

* * *

Rule 4450(a)(5): \$1 minimum bid price requirement for continued listing on the National Market.

Issue: The company's bid price was below \$1. The company believed that if its common stock were listed on the SmallCap Market, the resulting increase in visibility and liquidity would increase its stock price, so that it could effect a reverse stock split to regain compliance with the \$1 minimum bid requirement.

Determination: The company was properly delisted for failure to comply with the \$1 minimum bid price requirement for continued listing on the National Market. The Listing Council is unwilling to rely on anticipated favorable market reaction in order to find that a company

can regain compliance with the minimum bid price requirement. Although the company received shareholder approval for a reverse stock split more than eight months prior to the decision, the company did not announce a definitive date to effect such a reverse stock split.

* * *

Rule 4450(a)(2): Market value of publicly held shares of \$5,000,000 for continued listing on the National Market.

Issue: The market value of publicly held shares of the company's common stock was below \$5,000,000 for more than four months. The company requested that it be granted the opportunity to list its common stock on the SmallCap Market.

Determination: The company was properly delisted for failure to comply with the market value of publicly held shares requirement. The company had not submitted a definitive plan to regain compliance with the publicly held shares requirement or maintain compliance over the long term. Although the company's market value of publicly held shares exceeded the SmallCap continued listing requirements, the company failed to evidence compliance with all of the SmallCap Market standards for continued listing.

* * *

Rules 4350(c) and 4350(d)(2): Independent director and audit committee composition requirements.

Issue: For more than four months, the company's audit committee was only comprised of two members. The company stated that it expected to appoint a qualified audit committee member in the near future.

Determination: The company was properly delisted for failure to demonstrate compliance with the independent director and audit committee composition requirements. As of the date of the Listing Council's meeting on this matter, the company had not announced the appointment of a new independent director.

Publication Date*: 7/31/2012

Identification Number: 683

Listing Council Decision 2002-5	Identification Number 685
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Rules 4300 and 4330(a)(3): NASDAQ may exercise its discretion in applying additional or more stringent criteria for initial or continued inclusion or suspend or terminate the inclusion of an otherwise qualified security if NASDAQ deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest.

Issue: Staff's investigation revealed a stock exchange settlement agreement involving a director of the company, who was also an officer and significant shareholder. The agreement, in which the director acknowledged the facts in the agreement as true and correct, set forth the regulatory history of the director, including misrepresentations to the stock exchange and numerous serious violations of sales practice regulations, which occurred in the mid-1990's. The company stated that it made good faith efforts to address Staff's concerns through the director's resignation from the board and his position as an officer. In addition, the director provided irrevocable proxies for his voting rights to the independent directors of the company.

Determination: The company was properly delisted based on public interest concerns. The Listing Council believed that the stock exchange findings constituted a pattern of fraudulent behavior towards public investors. Furthermore, the director continued to exert influence over the company as a significant shareholder and an employee serving in an important role. Although the director provided irrevocable proxies to independent directors, the proxies expired in two years, and the director was not prevented from disposing of his shares or purchasing and voting additional shares of the company prior to such time. The director's admitted past violations of the stock exchange securities regulations and his continued influence over the company raised the risk of future violations of securities laws and regulations and provided grounds for denying the company's request for continued listing in order to protect the quality of and public confidence in The NASDAQ Stock Market and to protect investors and the public interest. The Securities and Exchange Commission ("SEC") has held that "the risk associated with investing in NASDAQ is market risk rather than the risk that the promoter or other persons exercising substantial influence over the issuer is acting in an illegal manner."* The SEC has further held that "both the tax and the securities regulatory schemes depend on the honor, candor, and integrity of regulated persons to report accurately to the regulatory authority the information sought by such authority."**

* * *

Rule 4310(c)(4): \$1 minimum bid price requirement for continued listing on the SmallCap Market.

Issue: The bid price of the company's common stock was below \$1. The company stated that its stock was below \$1 for only two days

prior to delisting and, therefore, had not been below \$1 for the 30 consecutive business days as required by Listing Rule 4310(c)(8)(B). The company maintained that its compliance with the minimum bid price requirement should therefore be evaluated based on the first 30 consecutive days after it begins trading on NASDAQ.

Determination: The company was properly delisted based on public interest concerns. Because the company did not comply with the minimum bid price requirement and did not have a definitive plan to regain compliance in the near term, it would be inappropriate to relist the company. In this regard, the SEC has determined that investors are entitled to assume that the securities on NASDAQ meet the listing requirements.

* DHB Capital Group, Inc., Securities Exchange Act Rel. No. 37069 (April 5, 1996) (quoting Tassaway, Inc., Securities Exchange Act Rel. No. 34151 (March 13, 1975)).

** JJFN Services, Inc., Securities Exchange Act Rel. No. 39343 (November 21, 1997).

Publication Date*: 7/31/2012

Identification Number: 685

Listing Council Decision 2002-4

Identification
Number 686

Rule 4310(c)(14): The issuer shall file with NASDAQ all reports and other documents required to be filed with the Securities and Exchange Commission ("SEC"). Annual reports filed must contain audited financial statements.

Issue: The company filed a Form 10-K that did not contain the audit opinion of its independent auditor. The company was in the process of restating its financial statements for the prior two fiscal years following SEC allegations that the company made material misrepresentations and omissions in its public reports and press releases. At the time of the Listing Council decision, the company had still not made the necessary filings.

Determination: The company was properly delisted for failure to comply with the filing requirement. The Listing Council takes seriously the requirement to file accurate and reliable financial statements, and the concomitant purpose to provide investors with current information regarding the company. Investors in securities listed on NASDAQ are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934. In this case, however, investors did not have access to accurate financial information regarding the company for the previous two fiscal years. Furthermore, in the absence of accurate and reliable financial statements, Staff was unable to determine if the company was in compliance with all of the NASDAQ continued listing requirements.

Publication Date*: 7/31/2012

Identification Number: 686

Listing Council Decision 2002-3

Identification
Number 687

Rule 4310(c)(2): \$2,000,000 net tangible assets/\$2,500,000 shareholders' equity requirement, or its alternatives, for continued listing on the SmallCap Market.

Issue: The company no longer satisfied the net tangible assets/shareholders' equity requirement. Based on the company's plan to raise equity in the near term, the Panel determined to continue listing the company's securities subject to the company providing executed subscription agreements, absent any material contingencies, to the Panel. Following the Panel's determination, the company definitively stated that it would not be able to enter into binding subscriptions prior to the Panel's deadline. The Panel then delisted the company. Two days after the Panel's delisting decision, the company stated that it had received a binding subscription agreement from an investor, which would bring it into compliance with the shareholders' equity requirement. The agreement was conditioned upon the company maintaining the listing of its securities on The NASDAQ Stock Market at all times prior to the funding.

Determination: The company was properly delisted for failure to comply with the Panel's exception and the net tangible assets/shareholders' equity requirement. The Panel may provide a company with an exception to the continued listing requirements, if it believes that a company may come into compliance with the requirements in the near term. Once it becomes clear that a company cannot comply with the terms of the exception by the expiration date (even if such information is provided prior to the expiration date), the Panel may in its discretion immediately delist the company. Furthermore, the company's contemplated transaction pursuant to the subscription agreement did not appear feasible due to the material condition that could not be satisfied.

* * *

Rule 4310(c)(4): \$1 minimum bid price requirement for continued listing on the SmallCap Market.

Issue: The bid price of the company's common stock was below \$1. The company believed its common stock price would increase, if its securities were relisted on the SmallCap Market. It also believed that its stock price would rise as a result of recent news announcements related to its products.

Determination: The company was properly delisted for failure to comply with the minimum bid price requirement. Anticipated favorable market reaction is not a definitive plan to regain compliance with the minimum bid price requirement.

Publication Date*: 7/31/2012

Identification Number: 687

Listing Council Decision 2002-1

Identification
Number 689

Rules 4450(a)(3) and 4450(b)(1): \$4,000,000 net tangible assets/\$10,000,000 shareholders' equity, or its alternatives, the \$50,000,000 market value of listed securities/\$50,000,000 total assets and \$50,000,000 total revenue requirements, for continued listing on the National Market.

Issue: The company no longer satisfied the net tangible assets/shareholders' equity requirement for the National Market. The company stated that it was in negotiations with investors to complete several proposed private placements to regain compliance.

Determination: The company was properly transferred to the SmallCap Market. The company's plan of compliance was not definitive. The company did not make any public announcements or provide the Listing Council with any information indicating that it had entered into any definitive agreements with investors. The company did not comply with the National Market net tangible assets/shareholders' equity continued listing requirements, but complied with all the requirements for continued listing on the SmallCap Market.

Publication Date*: 7/31/2012

Identification Number: 689

Listing Council Decision 2018-3

Identification
Number 1663

Rule 5550. Continued Listing of Primary Equity Securities

A Company that has its Primary Equity Security listed on the Capital Market must continue to meet all of the requirements set forth in Rule 5550(a) and at least one of the Standards set forth in Rule 5550(b). Failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series. (a) Continued Listing Requirements for Primary Equity Securities: ... (2) Minimum bid price of at least \$1 per share.

Issue: At issue is whether the Listing Council will review the decision of the Panel where the Company asked that the Council consider only the Company's arguments before the Panel – which the Panel rejected in its decision -- and the Company did not make any arguments on appeal as to why the Panel's decision was incorrect.

Determination: Affirm the decision to suspend and delist the Company.

After a review of the record in this matter, the Listing Council affirms the Panel's decision. The Company has asserted no grounds whatsoever in its appeal for the Listing Council to reverse the Panel's decision, as reconsidered on July 31, 2018. In absence of any assertion that the Panel erred in its July 31 decision – a decision which squarely addressed the arguments that the Company made in its request for reconsideration – or that extraordinary circumstances have occurred that call the Panel's decision into question, the Listing Council will not substitute its judgment for that of the Panel. Simply put, it is not the role of the Listing Council, in considering an appeal that a listed company has submitted to it, to search on its own for grounds to scrutinize the Panel's reasoning. If the Company has a quarrel with the Panel, then it is the job of the Company – and more pointedly, its advisor – to submit a brief which states those grounds in writing and does so with specificity. Absent a call for review – which has not occurred in this matter – the job of the Listings Council is to evaluate the arguments that a listed company presents to it on appeal, not to divine those arguments in the first instance.

Publication Date*: 11/29/2018

Identification Number: 1663

Listing Council Decision 2018-1

Identification
Number 1647

IM-5101-2: Listing of Companies Whose Business Plan is to Complete One or More Acquisitions

Generally, Nasdaq will not permit the initial or continued listing of a Company that has no specific business plan or that has indicated

that its business plan is to engage in a merger or acquisition with an unidentified company or companies.

However, in the case of a Company whose business plan is to complete an initial public offering and engage in a merger or acquisition with one or more unidentified companies within a specific period of time, Nasdaq will permit the listing if the Company meets all applicable initial listing requirements, as well as the conditions described below.

...

(b) Within 36 months of the effectiveness of its IPO registration statement, or such shorter period that the company specifies in its registration statement, the Company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account (excluding any deferred underwriters fees and taxes payable on the income earned on the deposit account) at the time of the agreement to enter into the initial combination.

Rule 5110(c): Reverse Mergers

(1) A Company that is formed by a Reverse Merger (a "Reverse Merger Company") shall be eligible to submit an application for initial listing only if the combined entity has, immediately preceding the filing of the initial listing application:

(A) traded for at least one year in the U.S. over-the-counter market, on another national securities exchange, or on a regulated foreign exchange, following the filing with the Commission or Other Regulatory Authority of all required information about the transaction, including audited financial statements for the combined entity...

Rule 5505: Initial Listing of Primary Equity Securities

A Company applying to list its Primary Equity Security on the Capital Market must meet all of the requirements set forth in Rule 5505(a) and at least one of the Standards in Rule 5505(b).

(a) Initial Listing Requirements for Primary Equity Securities:

...

(3) At least 300 Round Lot Holders

Issue: May a special purpose acquisition company ("SPAC"), which has failed to consummate a business combination within the 36 month time period prescribed by IM-5101-2, nevertheless avoid de-listing because it expects to consummate a reverse merger prior to the expected date when de-listing would become effective?

Determination: Affirm the Hearing Panel decision to suspend and delist the Company.

The Company, which is a SPAC, acknowledged the ruling of the Hearings Panel that it had failed to consummate a business combination with the 36 month period required by IM-5101-2.

The Company's sole argument for asking the Listing Council to overrule the Hearing Panel decision was that the Company believed that it would be meaningless for the Listing Council to proceed with de-listing the Company's securities given that the Company did not expect Nasdaq, as a practical matter, to be able to finalize the de-listing process before the Company consummated its merger. That is, if the Company consummated its reverse merger before its de-listing became final and effective, then the merged entity would qualify for immediate initial listing on Nasdaq and it would not be subject to seasoning requirements. The Listing Council rejected this argument.

The Listing Council stated that it will not excuse a listed company for its self-acknowledged, numerous, and prolonged violations of the Listing Rules simply because the Company plans to take actions that may ultimately moot any practical impact of the punishment that Nasdaq would otherwise impose upon it. To excuse violations under these circumstances, the Council said, would diminish the importance of the Listing Rules and delegitimize the Listing Council and its work to enforce compliance with the Rules. Public confidence in Nasdaq depends upon the legitimacy of Nasdaq's system of self-regulation. The legitimacy of this system, in turn, requires Nasdaq to hold listed companies consistently accountable when they fail to satisfy the requirements of the Listing Rules. Thus, even if the practical impact of de-listing a company's securities from Nasdaq was likely to be minimal or even nil, the Listing Council determined that it must nevertheless order de-listing when the fair administration of the Listing Rules requires the Listing Council to take such action or renders it appropriate.¹

That said, the Listing Council disagreed with the Company that de-listing the Company's securities would be pointless and have no practical effect given the imminence of the Company's merger. In light of the history of this matter, the Listing Council said that it lacked confidence in the Company's latest assertions about the likelihood success of and the timing of its plan to consummate its merger. The Listing Council noted that almost a year has passed since the Company first announced its prospective merger, and the transaction had yet to close despite several assurances by the Company that it would do so. Even during the course of this appeal, the Company changed its position as to when it expected to obtain shareholder approval for the merger.

Moreover, even if the Company did consummate the merger as planned, the Listing Council did not believe that Rule 5110 required Staff

to initially list the combined entity. Rule 5101 provides Nasdaq with "broad discretionary authority" over the listing of securities on Nasdaq "in order to maintain the quality of and public confidence in the market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to protect investors and the public interest." Pursuant to this authority and Nasdaq's Interpretive Material on the application of Rule 5101 (IM-5101-1), Nasdaq may "impose additional or more stringent criteria" to the application of its Rules. Thus, Staff was empowered to determine that because the Company was subject to a pending de-listing decision at the time it executed a reverse merger, the merged entity did not meet the one year prior listing requirement set forth in Rule 5110(c)(1) and must trade over-the-counter for a year prior to initial listing on Nasdaq.

Even if the Listing Council was sympathetic to the Company's plight, the Listing Council noted that it lacked discretionary authority to grant the Company further exceptions from compliance with the Rule 5505. Rule 5505 (the "Public Holder Requirement") a listed company's securities have at least 300 round lot holders. Rule 5820(d)(1) states that the Listing Council may grant an exception for a period not longer than 360 calendar days from the date of the Staff's delisting determination with respect to the deficiency for which the exception is granted; Staff issued its delisting decision for the Company's failure to comply with the Public Holder Requirement in February 2017.

The Listing Council stated that the scope of its authority to grant the Company an exception from the Business Combination Requirement was less certain. Although nothing in the Listing Rules expressly precluded the Listing Council from exercising its discretionary authority to grant exceptions under Rule 5820(d)(1), the nature of IM-5101-2 was such that this limitation could be reasonably implied. The Listing Council agreed with Staff that the Commission seemingly approved the Exchange's rules to list SPACs, in part, because the Exchange assured the Commission that any listed SPACs would face de-listing if they failed to complete a business within 36 months of the effective date of their initial public offering registration statement. See Securities Exchange Act Release No. 34-58228, 73 FR 44794 (July 31, 2008), SR-Nasdaq-2008-013 (July 25, 2008). Even if such a limitation on the Listing Council's authority was not reasonably implied, the Listing Council found good policy reasons for it to refrain from granting SPACs additional time beyond 36 months to complete their business combinations. The Council stated that the inability of a SPAC to execute a business combination, and to do so within the generous three year time period that the Exchange allots to it, strongly indicates that the SPAC is not fit for continued listing on the Exchange. It concluded that the listing of a company's securities for trading on Nasdaq is a mark of distinction that should not be afforded to companies that cannot fulfill in a timely manner even their most basic and fundamental corporate missions.

^[1]The Listing Council noted that, on a dubious basis, the Company created the very scenario that it asked the Listing Council to help it to avoid. That is, the Company filed an appeal of the Hearings Panel decision even though it expressly acknowledged in its appeal that it did not dispute the Hearing Panel's determination that the Company is non-compliant with the Listing Rules and therefore subject to de-listing. By the mere act of filing this appeal, the Company set in motion an appellate process whose only possible effect was to delay a final de-listing action by several months. Although the Listing Council encourages listed companies to file legitimate appeals to vindicate their rights under the Listing Rules, the Listing Council is loathe to reward companies that file frivolous appeals in an effort to game the system and to achieve strategic business goals for themselves. The Listing Council stated that it was especially reticent to reward such behavior when it observes that the companies which engage in it were represented by experienced advisors who are well-versed in the Listing Rules and the procedures of this Listing Council.

Publication Date*: 10/15/2018

Identification Number: 1647

Listing Council Decision 2002-2

Identification
Number 688

Rule 4310(c)(2): \$2,000,000 net tangible assets/\$2,500,000 shareholders' equity requirement, or its alternatives, for continued listing on the SmallCap Market.

Issue: The company no longer satisfied the net tangible assets/shareholders' equity requirement. The company provided projections and stated it would be in compliance after certain reorganization transactions were consummated.

Determination: The company was properly delisted for failure to comply with the net tangible assets/ shareholders' equity requirement. Even assuming that the company's projections were accurate, the company would soon fall below the net tangible assets/shareholders' equity requirement based on the company's history of losses.

* * *

Rule 4310(c)(7): 500,000-share public float requirement for continued listing.

Issue: The company's proxy statement reflected that the company had less than 500,000 shares in the public float. The company stated

it had in excess of 500,000 shares in the public float, assuming conversion of its preferred stock.

Determination: The company was properly delisted for failure to comply with the public float requirements. The public float requirement is based solely on shares issued and outstanding.

* * *

Rules 4350(c) and 4350(d)(2): Independent director and audit committee composition requirements.

Issue: One of the three members of the audit committee beneficially owned approximately 90% of the company.

Determination: The company was properly delisted for failure to demonstrate compliance with the independent director and audit committee composition requirements. A director, who has the ability to directly or indirectly control the company through 90% ownership, is an affiliate of the company, as referred to in Listing Rule 4200(a)(14)(A), and accordingly, he is not independent. The company did not disclose in its proxy statement a basis for an exception to the audit committee composition requirements, pursuant to Rule 4350(d)(2) (B).

* * *

Rules 4350(g) and 4350(e): Annual meeting and proxy solicitation requirements.

Issue: The company did not hold an annual shareholder meeting or mail proxy statements for 2½ years, while it was resolving a takeover contest and related litigation.

Determination: The company was properly delisted for failure to comply with the annual shareholder meeting and proxy solicitation requirements. An unresolved takeover contest and related litigation is an insufficient reason to violate the proxy solicitation and annual meeting requirements.

* * *

Rule 4350(h): Requirement for independent review of related party transactions for conflicts of interest.

Issue: The company, the chief executive officer, a director and a shareholder group led by the director entered into related party transactions and, as majority shareholders, approved the transactions. The company provided minutes of meeting, reflecting the existence of a special committee of directors.

Determination: The company was properly delisted for failure to demonstrate that the company's audit committee or a comparable body of the board of directors reviewed the transactions for conflicts of interest. The minutes did not reflect that the audit committee or an independent committee reviewed the transactions for conflicts of interests. The minutes did not state whether the special committee reviewed the transactions for conflicts of interests or which directors were on the special committee.

* * *

Rule 4351: Voting rights requirement.

Issue: The company issued convertible preferred shares to investors at a discount to the market price on the date the investors and the company entered into a stock purchase agreement. The company's majority shareholders approved the transaction. The preferred shareholders had the right to vote their shares on an as-converted basis at the company's annual shareholder meeting. To determine whether a voting rights violation exists, the preferred shareholders' voting rights are compared to their relative contribution based on the company's market value at the time of issuance of the preferred shares. The company stated that for purposes of the voting rights rule, the time of issuance of the preferred stock should be the date the letter of intent was signed, not the date the shares were issued.

Determination: The company was properly delisted for failure to comply with the voting rights requirements. In determining whether a voting rights violation exists, the execution date of a non-binding agreement cannot be the basis for determining the value of the securities because the value is not definitive if the agreement is unenforceable and the terms can be changed. The company created a new class of securities that vote at a higher rate than the existing common shareholders, and shareholders cannot otherwise agree to permit a voting rights violation by the company through approval of the transaction.

Quantitative Continued Listing Standards

Rule 5450: A Company that has its Primary Equity Security listed on the Global Market must continue to substantially meet all of the requirements set forth in Rule 5450(a) and at least one of the Standards in Rule 5450(b). Failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series. A security maintaining its listing under 5450(b)(3) need not also be in compliance with the quantitative maintenance criteria in the Rule 5500 series.

(a)...

(b) Continued Listing Standards for Primary Equity Securities:

(1) Equity Standard

- (A) Stockholders' equity of at least \$10 million;
- (B) At least 750,000 Publicly Held Shares;
- (C) Market Value of Publicly Held Shares of at least \$5 million; and
- (D) At least two registered and active Market Makers.

(2) Market Value Standard

- (A) Market Value of Listed Securities of at least \$50 million;
- (B) At least 1,100,000 Publicly Held Shares;
- (C) Market Value of Publicly Held Shares of at least \$15 million; and
- (D) At least four registered and active Market Makers.

(3) Total Assets/Total Revenue Standard

- (A) Total assets and total revenue of at least \$50 million each for the most recently completed fiscal year or two of the three most recently completed fiscal years;
- (B) At least 1,100,000 Publicly Held Shares;
- (C) Market Value of Publicly Held Shares of at least \$15 million; and
- (D) At least four registered and active Market Makers.

* * * * *

Rule 5550: A Company that has its Primary Equity Security listed on the Capital Market must continue to meet all of the requirements set forth in Rule 5550(a) and at least one of the Standards set forth in Rule 5550(b). Failure to meet any of the continued listing requirements will be processed in accordance with the provisions set forth in the Rule 5800 Series.

(a) ...

(b) Continued Listing Standards for Primary Equity Securities:

- (1) Equity Standard: Stockholders' equity of at least \$2.5 million;
- (2) Market Value of Listed Securities Standard: Market Value of Listed Securities of at least \$35 million; or
- (3) Net Income Standard: Net income from continuing operations of \$500,000 in the most recently completed fiscal year or in two of the three most recently completed fiscal years.

Issue: The company was before the Hearing Panel on an appeal of a Staff determination to delist the company for failing to provide an adequately definitive plan to regain compliance with Rule 5450(b). In reaching its determination that the company's plan was not definitive, Staff noted that the company did not provide signed agreements or contracts demonstrating its ability to complete multiple capital raising transactions, the form and timing of which had changed multiple times during the period Staff was reviewing the plan. The Hearing Panel issued a decision that moved the company to the Capital Market and provided an extension through June 2012 to regain compliance with Rule 5550(b). The Listing Council called the Hearing Panel decision for review, yet holding the Listing Council proceedings in abeyance until final action was reached in the Hearing Panel matter. Prior to the expiration of the Hearing Panel extension, the company informed the Listing Council that it would not regain compliance with the listing standards by expiration of the Hearing Panel exception and requested that the Listing Council exercise its authority to stay delisting of the company. The Listing Council did not exercise such authority, and the Hearing Panel thereafter issued a decision to delist the company. The company appealed the Hearing Panel decision to delist the company to the Listing Council.

Determination: Affirm the decision to delist the company.

The company's estimations both on timing and the amount of capital raised have been consistently over-optimistic and inaccurate. The various milestones set by the company relating to its plan of compliance were not met. With respect to a conversion of notes described in the compliance plan, the company encountered delays in the timeframe set forth to the Staff and the Hearing Panel. The Listing Council was not provided with any update from the company concerning the actual amounts raised through such conversions and the effect such conversions have had in regard to its stockholders' equity deficit. Given the low price of the company's shares relative to the currently applicable conversion prices, the Listing Council agrees with Staff's concern that the company's note holders will not be motivated to convert their debt to equity. With respect to the private placement and registered direct offerings described in the compliance plan, the company's description of the offerings was not definitive. The company's description did not provide milestones, commitments or agreements. The company merely stated that such equity raises would occur sometime following the agreement with the note holders. As recently as August 2012, the company has publicly stated that "it has been difficult so far to attract new equity investments," which provides further evidence that the company is not likely to close a transaction sufficient to regain compliance in the near term and maintain compliance going forward. As such, the Listing Council agrees with Staff that the company's plans of compliance have not been definitive^[1], and that the company will not likely be able to regain and maintain compliance with continued listing standards.

^[1] Nasdaq FAQs provide guidance to companies on, among other things, what is expected to be presented in plans of compliance (To view these FAQs, click [here](#)). These FAQs are clear that such plans should be definitive and, with regard to private placements and other financial arrangements, companies should provide agreements and lists of investors. The Listing Council acknowledges that the determination of whether a plan of compliance is definitive is a matter of judgment and respects Hearing Panel discretion in the exercise thereof. However, in the present case, the Listing Council failed to find, either in the record or in the Hearing Panel decision, a basis for concluding with any confidence that the Company's plan of compliance was "definitive." This observation affects neither the Hearing Panel decision of March 2012 nor the Hearing Panel decision of June 2012.

Publication Date*: 12/3/2012

Identification Number: 1064

Listing Council Decision 2014-1

Identification
Number 1115

Filing Delinquency and Public Interest

Rule 5101: Nasdaq has broad discretionary authority over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

Rule 5110(b): Nasdaq may use its discretionary authority under the Rule 5100 Series to suspend or terminate the listing of a Company that has filed for protection under any provision of the federal bankruptcy laws or comparable foreign laws, or has announced that liquidation has been authorized by its board of directors and that it is committed to proceed, even though the Company's securities otherwise meet all enumerated criteria for continued listing on Nasdaq. In the event that Nasdaq determines to continue the listing of such a Company during a bankruptcy reorganization, the Company shall nevertheless be required to satisfy all requirements for initial listing, including the payment of initial listing fees, upon emerging from bankruptcy proceedings.

Rule 5250(c)(2): Each Foreign Private Issuer shall submit on a Form 6-K, an interim balance sheet and income statement as of the end of its second quarter. This information, which must be presented in English, but does not have to be reconciled to U.S. GAAP, must be provided no later than six months following the end of the Company's second quarter. In the case of a Foreign Private Issuer that is a limited partnership, such information shall be distributed to limited partners if required by statute or regulation in the jurisdiction in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement.

Issue: At issue in this matter is whether the Company should remain listed, yet suspended from trading, notwithstanding that the Company does not comply with Rule 5250(c)(2), which requires the Company to file interim financial reports, or Rule 5110(b) as the Company filed for protection under its home country's bankruptcy laws. Staff also raised public interest concerns pursuant to Rules 5101 and IM-5101-1. A Panel determined to grant the Company additional time to regain compliance, but subsequently determined to delist the Company for failing regain compliance by the conclusion of the extension.

Determination: Reverse the Panel decision to delist the Company.

It appears that the Company faced unanticipated delays in the bankruptcy process, including filing of various motions and creditor

meetings, which resulted in the Company not regaining compliance within the time granted by the Panel. In its submissions to the Listing Council, the Company states that it is diligently working to obtain all necessary approvals, complete the restructuring, emerge from bankruptcy, and immediately evidence compliance with all applicable requirements for initial listing on the Capital Market well within the discretionary period available to the Listing Council. The Company has made some progress in this regard, reaching a milestone with the court's approval of the creditors' plan of settlement. In its brief to the Listing Council, the Company represented that the final settlement with the creditors will be approved by the court within approximately 30 to 45 days after the approval of the plan. The Company also represents that, following its emergence from bankruptcy, it will begin new operations with anticipated bookings of up to approximately \$14 million. In its brief to the Listing Council, Staff notes that, because the Company's shares are currently suspended from trading on Nasdaq and the post-merger company must meet all the requirements for initial listing, it does not object to the Listing Council granting the Company additional time to demonstrate compliance with initial listing standards.

The Panel determined to grant the Company the full extent of time available to allow it to regain compliance. When the Company did not meet the terms of the Panel decision, the Panel appropriately moved to delist the Company. The Listing Council has discretionary authority to grant the Company an additional extension of time to regain compliance. In light of the above, the Listing Council believes that allowing the Company to remain listed on Nasdaq yet suspended from trading presents a low risk of investor harm.

Accordingly, the Listing Council reverses the Panel decision to delist the Company and grants the Company through July 2014 to emerge from bankruptcy and evidence compliance with all requirements for initial listing on the Capital Market. Nothing in this decision limits the Listing Council from revisiting its determination should it become aware of a change in the facts and circumstances of the matter, which, in the opinion of the Listing Council, warrant modification of its decision.

Publication Date*: 8/5/2014

Identification Number: 1115

Listing Council Decision 2012-1

Identification
Number 1037

Public Interest

Rule 5101: NASDAQ is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market.

NASDAQ stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. NASDAQ Companies, from new public Companies to Companies of international stature, are publicly recognized as sharing these important objectives. NASDAQ, therefore, in addition to applying the enumerated criteria set forth in the Listing Rule 5000 Series, has broad discretionary authority over the initial and continued listing of securities in NASDAQ in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. NASDAQ may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on NASDAQ inadvisable or unwarranted in the opinion of NASDAQ, even though the securities meet all enumerated criteria for initial or continued listing on NASDAQ. In all circumstances where the Listing Qualifications Department (as defined in Listing Rule 5805) exercises its authority under Listing Rule 5101, the Listing Qualifications Department shall issue a Staff Delisting Determination under Listing Rule 5810(c)(1), and in all circumstances where an Adjudicatory Body (as defined in Listing Rule 5805) exercises such authority, the use of the authority shall be described in the written decision of the Adjudicatory Body.

Bid Price

Rule 5550(a)(2): A Company that has its Primary Equity Security listed on the Capital Market must continue to maintain a minimum bid price of at least \$1 per share.

Issue: The company was delisted by a Hearings Panel for public interest concerns and for failure to regain compliance with NASDAQ's minimum bid price requirement.

After granting the company two 180 day compliance periods to regain compliance with the minimum bid requirement, Staff issued a delisting determination. The company appealed the determination to the Hearings Panel. During the Hearings Panel proceedings, Staff determined the company was a public interest concern based on the action it took in writing off substantial loans owed by the company's CEO, who is also Chairman of the company. On November 16, 2011, the Hearings Panel issued a decision to delist the company based on its non-compliance with the minimum bid price requirement and for public interest concerns. On November 29, 2011, the company appealed the Hearings Panel decision to delist the company to the Listing Council.

Bid Price

The company has been, and continues to be, out of compliance with NASDAQ's bid price requirement. The company failed to regain compliance with the bid price rule by effectuating a reverse stock split, as it had committed to do as a condition of receiving a second 180 compliance period. Staff issued a delisting determination at the expiration of the second compliance period, consistent with Listing Rule 5550(a)(2).

Subsequent to Staff's delisting determination, and the company's appeal of the matter to the Hearings Panel, the company asserted that it had regained compliance with Listing Rule 5550(a)(2) since its bid price had closed at or above \$1.00 for ten trading days. Staff had not made such a determination and was reviewing what it considered suspicious trading in the company's stock. Upon completion of its preliminary review of the aberrant trading in the company's stock, Staff determined to extend the period to regain compliance with the bid price requirement to twenty days, consistent with the authority provided by Listing Rule 5810(c)(3)(F). Staff based its decision on several facts that led it to believe that the stock was manipulated.

The company did not maintain a bid price of \$1 or more during the twenty day compliance period, never had a closing bid price significantly over \$1, and currently has closing bid prices in the mid 20 cent range, which is near the price it had traded prior to the brief run up in its stock price. The company had committed to effectuate a stock split if its stock was still below \$1.00 at the end of the second compliance period, a condition to receiving the second period pursuant to Listing Rule 5810(c)(3)(A)(ii), yet did not do so. The company did not indicate a willingness to effectuate a reverse stock split during the Hearings Panel proceedings.

Public Interest Concerns: Related Party Loan Write Off

Prior to its listing in August 2008, the company extended loans totaling approximately \$140 million to two companies controlled by the company's CEO and largest shareholder for the stated purpose of funding the construction of expressways in China. Subsequently, the loan terms were modified and extended on multiple occasions. Despite receiving only one interest payment on the non-performing notes, the company also froze interest accruals on the non-performing notes and determined to extend \$129 million in new loans to the two entities owned and controlled by the Chairman and CEO, in addition to two other companies also owned by him (collectively, the "Non-Performing Loans").

In September 2009, in an attempt to collect on the monies owed by the CEO's entities, the company entered into a letter of intent to purchase 51% of one of the companies, yet it had to abandon the purchase when it was clear that government approval was not forthcoming. In July 2011, the company announced that its board of directors had determined to write off a substantial portion of the Non-Performing Loans. The company also announced that the CEO had offered ownership interest in a commercial, residential real estate and retail shopping mall development project as partial payment of the Non-Performing Loans, and that the board of directors was evaluating the proposal. In August 2011, the company issued a press release that announced that the board of directors had met and discussed, among other things, the company's plans to write off the Non-Performing Loans involving the CEO, and taking a 51% interest in a property held by the CEO as a partial offset to the Non-Performing Loans. In a Form 8-K filed with the SEC in October 2011, the company stated that it had entered into agreements to acquire 51% of the entity controlled by the CEO, (the "Development Company"), as described in the company's prior disclosures. The company also noted that it had recorded provisions for bad debt expense of \$149.5 million, or more than 70% of the \$210 million owed by the companies controlled by the CEO.

In October 2011, Staff informed the company that it had determined that the company's actions concerning the related party Non-Performing Loans represented a public interest concern, which was an additional basis for delisting pursuant to Listing Rule 5101. As a basis for its determination, Staff asserted that the company failed to undertake sufficient efforts to collect the amounts due on the Non-Performing Loans, instead accepting rights to control a separate related-party company, the value of which was much less than the outstanding principal and interest balances. Staff further noted that the company's failure to aggressively pursue collection efforts, and the subsequent transactions, were done for the benefit of the CEO and to the detriment of non-affiliated shareholders. In response to the additional basis for delisting, the company claimed that management and the board of directors acted in the best interests of the public shareholders with respect to the Non-Performing Loans, noting that it had modified, extended, and deferred interest payments on the loans as a normal response to any non-performing loan and the decision to write off the majority of the loan was made only after all efforts were exhausted.

Public Interest Concerns: CFO Resignation

In mid-December 2011, the company issued a Form 8-K that disclosed that, the company received a letter of resignation on September 21, 2011 from CFO of the company, who was also a company director. The resignation letter was sent to the CEO. The company asserted in the Form 8-K that it did not accept the CFO's resignation, but that it knew that he did not continue to perform his duties as CFO of the company. There is evidence in the record that the company along with then-company counsel and independent auditors were aware of the CFO's unambiguous and immediate resignation from the company as a director and CFO. The company appointed an interim CFO a day prior to filing the mid-December 2011 Form 8-K.

Notwithstanding the CFO's resignation several SEC disclosures were subsequently filed with the SEC containing his signature. As detailed in the company's mid-December 2011 Form 8-K, the company's Form 10-K for the fiscal year ended June 30, 2011 filed on

October 13, 2011, its Quarterly Report on 10-Q for the quarter ended September 30, 2011, filed on November 14, 2011 and its Annual Report on Form 10-K/A for the fiscal year ended June 30, 2011, filed on November 14, 2011, all of which included the resigned CFO's signatures, had in fact not been prepared or reviewed by the resigned CFO, and the resigned CFO had not personally signed such reports or consented to the use of his signature on such reports. It also appears that the company forged the resigned CFO's signature on a letter to Staff, dated September 30, 2011 – eight days after his resignation and unknown to him.

Determination: Affirmed. After a review of the record in this matter, the Listing Council affirms the Hearings Panel decision.

Bid Price

The Listing Council concludes that Staff acted appropriately in delisting the company based on bid price deficiency and its failure to cure the deficiency with a reverse stock split at the end of its second compliance period as it had committed to do. The Listing Council further concludes that it was appropriate for Staff to apply a 20-day compliance period to the bid price deficiency pursuant to Listing Rule 5810 (c)(3)(F) based on concerns of stock price manipulation. The company asserts that the increases in its stock price and volume are due to the public's positive reaction to the Development Company acquisition. The Listing Council finds this argument unpersuasive given that the abnormal trading in the company's stock began over a month after the initial notice of the potential acquisition on, yet days prior to subsequent news concerning the prospective transaction. The Listing Council further concludes that Hearings Panel acted appropriately in delisting the company for failing to regain compliance with the minimum bid price requirement. The company was unwilling to effectuate a reverse stock split adequate for it to regain compliance with Listing Rule 5550(a)(2) and the company's closing bid price was declining during the period from the Hearings Panel hearing through the issuance of its decision.

The company's revised compliance plan provided to the Listing Council includes a provision to seek authority to effectuate a reverse stock split to regain compliance with Listing Rule 5550(a)(2), which would take approximately 45 to 50 days according to the company. The Listing Council believes that the company has had ample opportunity to cure its bid price deficiency over the 360 days it was afforded by Staff, and as such, the Listing Council finds no reason to reverse the Hearings Panel's decision to delist the company.

Public Interest Concerns: Related Party Loan Write Off

The company wrote off as bad debt approximately \$150 million of the \$210 million owed under the Non-Performing Loans. The Listing Council believes that it was a reasonable determination to find a public interest concern based on the facts and circumstances. The Non-Performing Loans were made to entities controlled by the company's Chairman and CEO, who received the benefits of the loans over many years, paying negligible interest and repaying only a fraction of the original amount loaned. The Listing Council is concerned that the company has not acted in the best interest of its public shareholders and believes that the company's actions with respect to the Non-Performing Loans show a pattern of conduct that, in aggregate, reasonably support a determination that delisting was warranted pursuant to Listing Rule 5101.

Public Interest Concerns: CFO Resignation

The Listing Council finds very concerning the apparent forgery of the resigned CFO's signature on documents filed with the Commission and submitted to NASDAQ, the failure to disclose the CFO's resignation as CFO and director timely, and the statements made by an independent director at the Hearings Panel hearing, which were misleading and evasive. It is undisputed that the CFO resigned in September 2011. It is also undisputed that the CEO and independent director were notified of resignation at the time of the resignation. Notwithstanding, the CEO and independent director permitted the company to submit documents to the SEC and NASDAQ with the resigned CFO's signature as the purported CFO. In addition, at the Hearings Panel hearing, which occurred after the resignation of the CFO yet before the appointment of an interim CFO, an independent director stated that he had spoken to the CFO regarding possible manipulation of the company's stock price. The earliest evidence in the record of NASDAQ's concern regarding possible manipulation of the company's stock price was in a request for information sent to the company's then-counsel on September 22, 2011, a day after the resignation of the CFO from the company. The Listing Council finds the company's misrepresentations and lack of disclosure concerning CFO's resignation very troubling and an additional basis to delist the company pursuant to Listing Rule 5101.

Rule 5101 provides NASDAQ with "broad discretionary authority" over the listing of securities on NASDAQ "in order to maintain the quality of and public confidence in the market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to protect investors and the public interest." This authority stems directly from NASDAQ's delegated responsibilities under the Securities Exchange Act of 1934. Listing Rule 5101 is not invoked lightly and, in instances in which a public interest concern is identified, the issues are very serious. In the present case, Staff's concerns over the company's actions concerning the loans made to the CEO and Chairman were sufficient to find a public interest concern and to delist the company pursuant to Listing Rule 5101. The company's misrepresentations and lack of disclosure concerning the CFO's resignation is an independent, and truly troubling, basis for determining the company represents a public interest concern, and thus warrants delisting pursuant to Listing Rule 5101.

5101. Preamble to the Rule 5100 Series

Nasdaq is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. Nasdaq stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. Nasdaq Companies, from new public Companies to Companies of international stature, are publicly recognized as sharing these important objectives.

Nasdaq, therefore, in addition to applying the enumerated criteria set forth in the Rule 5000 Series, has broad discretionary authority over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest. Nasdaq may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq. In all circumstances where the Listing Qualifications Department (as defined in Rule 5805) exercises its authority under Rule 5101, the Listing Qualifications Department shall issue a Staff Delisting Determination under Rule 5810(c)(1), and in all circumstances where an Adjudicatory Body (as defined in Rule 5805) exercises such authority, the use of the authority shall be described in the written decision of the Adjudicatory Body.

IM-5101-1. Use of Discretionary Authority

To further Companies' understanding of Rule 5101, Nasdaq has adopted this Interpretive Material as a non-exclusive description of the circumstances in which the Rule is generally invoked.

...

Although Nasdaq has broad discretion under Rule 5101 to impose additional or more stringent criteria, the Rule does not provide a basis for Nasdaq to grant exemptions or exceptions from the enumerated criteria for initial or continued listing, which may be granted solely pursuant to rules explicitly providing such authority.

Rule 5250(c)(1): A Company shall timely file all required periodic financial reports with the Commission through the EDGAR System or with the Other Regulatory Authority. A Company that does not file through the EDGAR System shall supply to Nasdaq two (2) copies of all reports required to be filed with the Other Regulatory Authority or email an electronic version of the report to Nasdaq at continuedlisting@nasdaq.com. All required reports must be filed with Nasdaq on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with Nasdaq shall contain audited financial statements.

Rule 5820(d)(4): In the case of a Company that fails to file a periodic report (e.g., Form 10-K, 10-Q, 20-F, 40-F, or N-CSR), the Listing Council may grant an exception for a period not to exceed 360 days from the due date of the first such late periodic report. The Company can regain compliance with the requirement by filing that periodic report and any other delinquent reports with due dates falling before the end of the exception period. In determining whether to grant an exception, and the length of any such exception, the Listing Council will consider the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

Issue: At issue is whether the Listing Council has discretion to allow a company to remain listed notwithstanding the fact that it was delinquent in filing its periodic financial reports for more than a year prior to the Panel's de-listing determination, when during the pendency of the Company's appeal, the Company filed its delinquent financial reports?

Determination: Affirm the decision of the Hearings Panel to suspend and delist the Company.

The Listing Council agreed with Staff that the Company made no cognizable or persuasive arguments in its briefs that the Panel's delisting determination was made in error. In this regard, the Listing Council noted that the Company itself stated expressly that it does not quarrel with the Panel's determination or its interpretation of the Listing Rules.

Listing Rule 5815(c)(1)(F) provides that the extent of the Panel's discretion to grant a company an exception to Listing Rule 5250(c) is 360 days following the due date of a company's first delinquent periodic report, and that a company may regain compliance with the Listing Rule only by filing its delinquent reports before the end of the exception period. In this instance, the Company requested and it received from the Panel the full 360 day exception period within which to regain compliance. Nevertheless, the Company informed the

Panel, on May 4, 2018, that it would not be in a position to regain compliance before the end of the exception period on May 10, 2018. Given that Listing Rule 5815(c)(1)(F) afforded the Panel no further discretion to grant the Company an exception beyond February 23, the Listing Council determined that the Panel had no choice but to de-list the Company.

Moreover, the Listing Council noted that Listing Rule 5820(d)(4) afforded no additional discretion to the Listing Council to grant the Company a further extension. Like Listing Rule 5815(c)(1)(F), Listing Rule 5820(d)(4) states that the Listing Council "may grant an exception for a period not to exceed 360 days from the due date of the first such late periodic report" and that a company "can regain compliance with the requirement by filing ... delinquent reports with due dates falling before the end of the exception period."

The Listing Council disagreed with the Company's assertion that Listing Rule 5101 authorized the Listing Council to act as it sees fit, notwithstanding restrictions imposed upon it by other Listing Rules, such as Listing Rule 5820. Although Listing Rule 5101 does state that the Exchange has "broad discretionary authority over the initial and continued listing of securities," the Listing Council noted that the Rule also states immediately thereafter that "Nasdaq may use such discretion to deny initial listing, apply additional or more stringent criteria for the initial or continued listing of particular securities, or suspend or delist particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued listing of the securities on Nasdaq inadvisable or unwarranted in the opinion of Nasdaq, even though the securities meet all enumerated criteria for initial or continued listing on Nasdaq." Moreover, the Listing Council observed that IM-5101-01 makes clear that the Listing Council's discretion does not include granting exemptions from Listing Rules to the extent that the Listing Rules do not explicitly authorize such exemptions to be made:

The Listing Council said that, although Nasdaq has broad discretion under Rule 5101 to impose additional or more stringent criteria, the Rule did not provide a basis for Nasdaq to grant exemptions or exceptions from the enumerated criteria for initial or continued listing, which may be granted solely pursuant to rules explicitly providing such authority. Any other interpretation of Listing Rule 5101, it said, would render meaningless the express limits that the Exchange placed upon the authority of the Listing Council elsewhere in the Listing Rules, including in Listing Rule 5820. The Listing Council presumed that the Exchange intended to impose limits on the Listing Council's authority, and it interpreted Listing Rule 5101 accordingly.

Finally, the Listing Council noted that Nasdaq, as a Self-Regulatory Organization, is responsible for maintaining a fair and orderly market and for enforcing its Listing Rules consistently and in a manner that serves the interests of investors and the public. It said that Nasdaq would be acting contrary to these responsibilities if it credited companies for their belated successes in regaining compliance with the Listing Rules. Simply put, the Listing Council remarked that it would be unfair for a basketball referee to allow a team to win a game with a half-court shot – no matter how skillful and impressive that shot may be – if the shot occurs after the buzzer sounds and the game ends.

Publication Date*: 10/15/2018

Identification Number: 1648

Listing Council Decision 2017-2

Identification
Number 1368

Filing Delinquency

Rule 5250(c)(1): A Company shall timely file all required periodic financial reports with the Commission through the EDGAR System or with the Other Regulatory Authority. A Company that does not file through the EDGAR System shall supply to Nasdaq two (2) copies of all reports required to be filed with the Other Regulatory Authority or email an electronic version of the report to Nasdaq at *continuedlisting@nasdaq.com*. All required reports must be filed with Nasdaq on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with Nasdaq shall contain audited financial statements.

Rule 5820(d)(4): In the case of a Company that fails to file a periodic report (e.g., Form 10-K, 10-Q, 20-F, 40-F, or N-CSR), the Listing Council may grant an exception for a period not to exceed 360 days from the due date of the first such late periodic report. The Company can regain compliance with the requirement by filing that periodic report and any other delinquent reports with due dates falling before the end of the exception period. In determining whether to grant an exception, and the length of any such exception, the Listing Council will consider the Company's specific circumstances, including the likelihood that the filing can be made within the exception period, the Company's past compliance history, the reasons for the late filing, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

Issue: At issue is whether the Listing Council has discretion to allow a company to remain listed notwithstanding that it has been and remains delinquent in filing its periodic financial reports for more than a year.

Determination: Affirm the decision to suspend and delist the Company.

In light of the facts and circumstances of this matter, which include the fact that the Company has been delinquent in filing its periodic financial reports with the SEC for more than a year, in violation of Rule 5250(c), and that it has failed to regain compliance with the Rule notwithstanding its receipt from the Staff and the Hearing Panel of multiple extensions of time within which to do so, the Listing Council finds that it lacks discretion under Rule 5820(d)(4) to grant any further compliance extensions, and that delisting of the Company's securities is required.

Delisting does not bar the Company from applying to relist on Nasdaq, or another U.S. exchange. In this regard, should the Company resolve the issues that give rise to this matter it may reapply to list on Nasdaq.

Lastly, the Listing Council deems to be non-cognizable within the context of the Company's disciplinary hearing the Company's request that the Listing Council consider modifying Rule 5820(d)(4) to permit it and companies like it to have a period of time longer than a year to regain compliance with Rule 5250(c). Although the Listing Council may recommend to the Exchange's Board of Directors amendments to its Rules, the Listing Council lacks authority to unilaterally modify those Rules.

Publication Date*: 5/3/2017

Identification Number: 1368

Listing Council Decision 2017-3

Identification
Number 1434

Filing Delinquency

Rule 5250(c)(1): A Company shall timely file all required periodic financial reports with the Commission through the EDGAR System or with the Other Regulatory Authority. A Company that does not file through the EDGAR System shall supply to Nasdaq two (2) copies of all reports required to be filed with the Other Regulatory Authority or email an electronic version of the report to Nasdaq at continuedlisting@nasdaq.com. All required reports must be filed with Nasdaq on or before the date they are required to be filed with the Commission or Other Regulatory Authority. Annual reports filed with Nasdaq shall contain audited financial statements.

Issue: At issue is whether the company should remain listed notwithstanding the fact that it was delinquent in filing its annual report and several quarterly filings notwithstanding its receipt of several prior periods of exemption from Rule 5250(c).

Determination: Affirm the decision to suspend and delist the Company.

In light of the facts and circumstances of this matter, which include the fact that the Company has been delinquent in filing its periodic financial reports with the SEC for a prolonged period of time, in violation of Rule 5250(c), and that it has failed to regain compliance with the Rule notwithstanding its receipt from the Hearing Panel of multiple extensions of time within which to do so, the Listing Council finds that the Company's partial progress in regaining compliance (by filing its delinquent Form 10-K) is inadequate, its request for a further extension is unwarranted, and that delisting of the Company's securities is appropriate, pursuant to Rule 5820(d)(4).

Delisting does not bar the Company from applying to relist on Nasdaq, or another U.S. exchange. In this regard, should the Company resolve the issues that give rise to this matter it may reapply to list on Nasdaq.

Publication Date*: 10/3/2017

Identification Number: 1434

Listing Council Decision 2013-3

Identification
Number 1089

Public Interest and Quantitative Continued Listing Standards

Rule 5101: Nasdaq has broad discretionary authority over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

Rule 5110(b): Nasdaq may use its discretionary authority under the Rule 5100 Series to suspend or terminate the listing of a Company that has filed for protection under any provision of the federal bankruptcy laws or comparable foreign laws, or has announced that liquidation has been authorized by its board of directors and that it is committed to proceed, even though the Company's securities otherwise meet all enumerated criteria for continued listing on Nasdaq. In the event that Nasdaq determines to continue the listing of such a Company during a bankruptcy reorganization, the Company shall nevertheless be required to satisfy all requirements for initial listing, including the payment of initial listing fees, upon emerging from bankruptcy proceedings.

Rule 5550(b): For continued listing, a Company shall have either:

(1) Equity Standard: Stockholders' equity of at least \$2.5 million; (2) Market Value of Listed Securities Standard: Market Value of Listed Securities of at least \$35 million; or (3) Net Income Standard: Net income from continuing operations of \$500,000 in the most recently completed fiscal year or in two of the three most recently completed fiscal years.

Issue #1: As initially presented to the Listing Council, at issue in this matter is whether the Company should remain listed, yet suspended from trading, notwithstanding that the Company does not comply with Rule 5550(b), which requires the Company to have a minimum of \$2.5 million in stockholders' equity, or Rule 5110(b) as the Company filed for protection under Chapter 11 bankruptcy. Staff also raised public interest concerns pursuant to Rules 5101 and IM-5101-1. Staff determined to deny the Company continued listing. On appeal, a Panel initially determined to grant the Company additional time to regain compliance subject to certain milestone, but subsequently determined to delist the Company for failing to meet all of the milestones.

Determination #1: Reverse the Panel decision to delist the Company.

In its submissions to the Listing Council, the Company notes that it is diligently working to obtain all necessary approvals, complete the restructuring, emerge from bankruptcy, and immediately evidence compliance with all applicable requirements for initial listing on the Capital Market well within the discretionary period available to the Listing Council. Moreover, the Company notes that the its Board of Directors will be reconstituted concurrent with the Company's emergence from bankruptcy so as to ensure the Company's compliance with all applicable board composition and corporate governance criteria upon emergence from bankruptcy.

Staff argues that the Company should be delisted because it failed to meet the milestones of the Panel decision and its own deadlines, and it failed to provide evidence that it will satisfy the applicable initial listing standards upon its emergence from bankruptcy. In addition, Staff is concerned that maintaining the Company's listing does not protect investors or the integrity of Nasdaq, notwithstanding that its securities are suspended from trading on Nasdaq. In support of this argument, Staff notes that prospective investors have an expectation that companies listed on Nasdaq meet the requirements of listing.

The Listing Council notes Staff's concern, but believes the risk of investor harm is low. The Company has made ongoing disclosure of the status of the bankruptcy and reorganization. Hence investors are aware of the bankruptcy proceedings, and importantly the Company appears to have genuine viable business operations. In this regard, the Company disclosed \$328,377,000 in revenues as of the last fiscal quarter. As such, it is unclear to the Listing Council what prospective investor harm is caused by a Company that is suspended from trading on Nasdaq, is traded with minimal volume over the counter, has provided ongoing public disclosure of its bankruptcy proceedings, and has significant other operations. The Listing Council is aware and considered that the Company has not filed its 10-K for the last fiscal year, but it believes for the reasons set forth above that, even with that failure, the risk of investor harm is low.

Bankruptcy proceedings can take time to resolve and the bankruptcy in the present case is, at the very least, adversarial. The Listing Council is unable to continue the Company's listing in perpetuity as it has limited discretion to grant a deficient company an extension to its listing on Nasdaq. The Panel previously granted the Company the full extent of its discretionary authority to allow the Company to regain compliance. When faced with clear evidence that the Company would be unable to regain compliance within its discretionary period, the Panel appropriately determined to delist the Company. The Listing Council, however, has additional discretionary authority that it can exercise in this matter. Based on the facts and circumstances of this case and for the reasons stated above, the Listing Council has decided to exercise its discretionary authority and allow the Company to remain listed on Nasdaq, subject to a suspension of trading.

Accordingly, the Listing Council reverses the Panel decision to delist the Company.

Issue #2: Should the Company remain listed when, subsequent to the issuance of the Listing Council decision, the Company filed for Chapter 7 liquidation, became deficient for not meeting board independence requirements, and became delinquent in paying its listing fees to Nasdaq. Based on the new facts and circumstances, the Listing Council revisited the matter and issued a second decision.

Decision #2: Subsequent to the issuance of the Listing Council decision in this matter, Staff notified the Company and Listing Council of two additional deficiencies: (1) Rule 5250(f), which requires payment of applicable Listing Fees and (2) Rule 5605, which requires a majority independent board and independent directors on certain committees. Staff noted that these deficiencies served as additional bases for delisting the Company's securities from Nasdaq. Staff also noted that the bankruptcy proceedings were converted from Chapter 11 bankruptcy to Chapter 7 liquidation. In response, the Company stated that that an interim Trustee was recently appointed and that the election for the permanent Trustee will be held in the near future, and thereafter the decision relating to the payment of the 2013 Nasdaq annual fee, and the timing of payment of such fee, will be made by the permanent Trustee. Last, the Company noted that it still remains possible that the proceeding could be converted back to a Chapter 11 proceeding in the future.

In conducting its review of the new facts and circumstances of this matter, the Listing Council considered the entire record reviewed by the Listing Council in issuing its initial decision, as supplemented by Staff's letter and the Company's response noted above. As

disclosed by Staff's letter, the facts and circumstances on which the Listing Council based its initial decision have changed. The Company's Chapter 11 reorganization has been converted into Chapter 7 liquidation. The Company represented in its response that it remains possible that the bankruptcy could be converted back to Chapter 11 reorganization. However, the Company provided no information on how or when such a conversion could take place. Therefore, in the absence of any evidence that the Company could emerge from its Chapter 7 bankruptcy proceedings as an operating company that can comply with the listing requirements on or prior to the expiration of the discretion afforded to the Listing Council, it has determined to delist the Company.

Publication Date*: 8/21/2013

Identification Number: [1089](#)