

## **Impact of Government Shutdown Frequently Asked Questions as of January 24, 2019**

During the government shutdown, the Securities and Exchange Commission (“SEC”) is operating in accordance with its pre-designed plan for operating during a shutdown. As required by federal law and regulations, SEC staff has ceased regular activities, but some staff are available to respond to emergency situations involving market integrity and investor protection. EDGAR remains open to receive filings.

The government shutdown affects the ordinary process for companies seeking to list on Nasdaq, including companies first seeking to go public, and may impact companies already listed on Nasdaq.

### **New Listings**

The SEC’s [Operations Plan Under A Lapse In Appropriations and Government Shutdown](#) states that the review and acceleration of effectiveness of registration statements by issuers for securities offerings will be discontinued during the shutdown. The Division of Corporation Finance has also published several [FAQs](#). In the FAQs, the Division reminded issuers that the Securities Act of 1933 (the “1933 Act”) allows an issuer to state that its registration statement will become effective in 20 days, and the Division noted that the issuer must amend the registration statement to include the statement required by Rule 473(b) and to provide all information required by the form, including the price of the securities it will sell.

### ***Would Nasdaq list a company that had cleared all SEC comments before the shutdown?***

Nasdaq generally would list a company that satisfies the listing requirements if the company cleared all SEC comments before the shutdown, regardless of whether the registration statement was already effective before the shutdown or becomes effective during the shutdown pursuant to the provisions of section 8(a) of the 1933 Act.

### ***Would Nasdaq list a company with outstanding SEC comments?***

In limited situations, where the company has substantially completed the comment process before the shutdown and acquiesces to any outstanding SEC comments in a manner that clearly addresses the SEC comment, Nasdaq would consider listing the company upon its registration statement becoming effective. In making a determination, among other factors, Nasdaq will consider the nature and materiality of the outstanding comments, the history of the company and any prior review of its filings by the SEC, and whether the company’s counsel and auditor are willing to represent that they believe all disclosure and accounting comments, respectively, have been fully addressed. In addition, Nasdaq would consider any supplemental disclosure related to the shutdown, such as additional risk factors.

Any company that believes it is in this situation and considering whether to proceed should contact Nasdaq Listing Qualifications Staff at +1 301 978 8001 to discuss the situation.

***Would Nasdaq list a company that had not yet received SEC comments or that first filed during the shutdown?***

Notwithstanding the ability for a registration statement to become effective during the shutdown, the U.S. capital markets depend upon the accuracy and completeness of registration statements and SEC review has been a longstanding part of this process. At this time, Nasdaq would not generally list a company in connection with an IPO unless the company has substantially completed the comment process with the SEC on its 1933 Act registration statement prior to the shutdown. However, Nasdaq recognizes the uncertain duration of the shutdown and its effects on companies. We are open to discussions with the government and legal, audit and banking advisors on controls, standards and processes that could adequately protect investors while allowing capital raising activity to continue. Nasdaq may revisit its position in light of any such discussions.

***Can a company currently trading in the over-the-counter market list on Nasdaq during the shutdown?***

A company currently trading in the over-the-counter market that satisfies Nasdaq's listing requirements can file a 1934 Act registration statement to list on Nasdaq, and Nasdaq will certify that registration statement. However, if a company trading on the over-the-counter market must file a 1933 Act registration statement to raise capital to satisfy Nasdaq's listing requirements, Nasdaq will treat it similarly to the way we treat an IPO (as discussed above) - we will not approve the application unless the company has received and addressed all SEC comments on that registration statement.

**Currently Listed Companies**

***What is the impact of the government shutdown on currently listed companies?***

Currently listed companies can generally proceed with capital raising transactions (including on new or existing shelf registration statements), though their pricing timeline may be affected depending on the type of offering and size of the company.

Companies are able to file proxies to hold meetings without SEC review, although the SEC is unable to review *no action* requests related to shareholder proposals that a company wishes to exclude from its annual meeting proxy statement.

Any company that believes its compliance with Nasdaq rules may be impacted by the government shutdown is encouraged to contact Nasdaq Listing Qualifications at +1 301 978 8001 to discuss the situation.