

SEC UPDATE



NASDAQ's New Three-Tier Market Classification

On July 1, 2006, NASDAQ's two-tier market classification was expanded to include a new third tier. This third tier sets the highest financial and liquidity listing standards for issuers wanting to list on NASDAQ. The three market tiers are listed below.

- The NASDAQ Global Select Market (the new tier);
- The NASDAQ Global Market (formerly known as the NASDAQ National Market); and
- The NASDAQ Capital Market (formerly known as the NASDAQ SmallCap Market).

NASDAQ Global Select Market

The Global Select Market has the highest standards of the three NASDAQ markets. In order to list on the Global Select Market, issuers must meet a \$5.00 bid price and satisfy **one** of the three financial requirements and **all** of the liquidity requirements outlined below.

Financial Requirements (Rule 4426(c)(1)-(3))

A Global Select Market issuer must satisfy one of the following three financial requirements:

Alternative 1 (Rule 4426(c)(1)):

- a. aggregate pre-tax income from continuing operations of at least \$11 million over the last three fiscal years;
- b. income (as opposed to a loss) from pre-tax continuing operations for each of the last three fiscal years; and
- c. at least \$2.2 million pre-tax income from continuing operations in each of the two most recent fiscal years.

In the event an issuer does not have three years of publicly available financial data to satisfy the financial requirements under Rule 4426(c)(1) above, the issuer may still be eligible for the Global Select Market, if it has (i) reported aggregate pre-tax income from continuing operations of at least \$11 million and (ii) positive pre-tax income from continuing operations in each of the reported fiscal years.

Alternative 2 (Rule 4426(c)(2)):

- a. aggregate cash flow of at least \$27.5 million over the last three fiscal years;
- b. positive cash flow for each of the last three fiscal years; and

- c. both (i) average market capitalization of at least \$550 million over the prior 12 months and (ii) total revenue of at least \$110 million in last fiscal year.

If an issuer is unable to satisfy the three year financial requirement under Rule 4426(c)(2) above, the issuer may still be eligible for the Global Select Market, if it has (i) reported aggregate cash flow of at least \$27.5 million; and (ii) positive cash flows in each of the reported fiscal years.

Alternative 3 (Rule 4426(c)(3)):

- a. average market capitalization of at least \$850 million over the prior 12 months; and
- b. total revenue of at least \$90 million in the last fiscal year.

Liquidity Requirements (Rule 4426(b))

A Global Select Market issuer must also satisfy the liquidity requirements set forth under one of the following listing categories.

1. ***New company listings***, which include initial public offering (“IPO”) and spin-off companies, affiliated companies or companies emerging from bankruptcy:
 - a. (i) a minimum of 2,200 beneficial shareholders for IPO and spin-off companies or (ii) at least 450 beneficial shareholders for companies emerging from bankruptcy or affiliated companies;
 - b. 1.25 million publicly held shares; and
 - c. (i) publicly held shares with either a market value of at least \$70 million for IPO and spin-off companies or affiliated companies or (ii)(A) a market value of at least \$110 million or (B) a market value of at least \$100 million, with shareholders’ equity of at least \$110 million for companies emerging from bankruptcy.
2. ***Seasoned securities listings:***
 - a. (i) a minimum of 2,200 beneficial shareholders or (ii) at least 550 beneficial shareholders and an average monthly trading volume over the prior 12 months of at least 1.1 million shares per month;
 - b. 1.25 million publicly held shares; and
 - c. (i) a market value of at least \$110 million or (ii) a market value of at least \$100 million, with shareholders’ equity of at least \$110 million.
3. ***Listings by closed-end management investment companies (Rule 4426(e)):***
 - a. (i) a minimum of 2,200 beneficial shareholders or (ii) at least 550 beneficial shareholders and an average monthly trading volume over the prior 12 months of at least 1.1 million shares per month;
 - b. 1.25 million publicly held shares; and
 - c. (i) a market value of publicly held shares for each fund of at least \$35 million, a total market value of publicly held shares for the fund group of at least \$220 million and

- d. an average market value of publicly held shares for all funds in the group of at least \$50 million for closed-end funds that are part of a group or (ii) a market value of publicly held shares for each fund of at least \$70 million for closed-end funds that are not part of a group.

Continued Listing (Rule 4450)

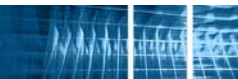
In order to remain in good standing on the Global Select Market, issuers must: (i) comply with all corporate governance standards, (ii) have at least 400 shareholders who hold 100 or more shares each, (iii) have a bid price of at least \$1.00 and (iv) meet all of the requirements of one of the following two standards:

1. (a) shareholders' equity of at least \$10 million, (b) at least 750,000 publicly held shares, (c) a market value of publicly held shares of at least \$5 million and two market makers (not including an electronic communications network); or
2. (a) a market value of listed securities, or total assets and total revenue each, of at least \$50 million, (b) at least 1.1 million publicly held shares, (c) market value of publicly held shares of at least \$15 million and four market makers (not including an electronic communications network).

Transferring to the Global Select Market

Issuers already listed on NASDAQ will be able to transfer to the new Global Select Market in the following ways:

1. All Global Market issuers that qualify for the Global Select Market on July 1, 2006 (including all NASDAQ-100 issuers) will be automatically transferred to the new market tier.
2. Beginning in October 2007, NASDAQ will perform annual reviews of all issuers listed on the Global Market and will automatically transfer all issuers who qualify for the Global Select Market, effective January 1 of the following year.
3. NASDAQ Global Market and NASDAQ Capital Market issuers may apply to transfer to the Global Select Market at any time, effective as soon as practicable thereafter, so long as the issuer meets the initial listing requirements of the Global Select Market and pays the applicable fees (if necessary) in connection with such transfer.
4. NASDAQ-listed issuers that satisfy the initial New York Stock Exchange listing standards, but not the Global Select Market standards, may be listed on the Global Select Market subject to a probationary period of 18 months. If such issuer fails to meet the Global Select Market standards by January 1, 2008 such issuer will alternatively be placed on the Global Market.



NASDAQ Global Market and Capital Market

To date, other than the amendments to the names of the remaining two markets, there have been no changes to the listing requirements for issuers applying to list on the NASDAQ Global Market (formerly known as the NASDAQ National Market) or the NASDAQ Capital Market (formerly known as the NASDAQ SmallCap Market).

This memorandum is not intended to provide legal advice with respect to any particular situation and no legal or business decision should be based solely on its content. Questions concerning issues addressed in this memorandum should be directed to any member of the Paul, Weiss Securities Group, including:

Mark S. Bergman	(44 20) 7367-1601	Edwin S. Maynard	(212) 373-3034
Richard S. Borisoff	(212) 373-3153	Raphael M. Russo	(212) 373-3309
Andrew J. Foley	(212) 373-3078	Lawrence G. Wee	(212) 373-3052
John C. Kennedy	(212) 373-3025	Tong Yu	(81 3) 3597-6306