

## CHANGE IN AFTER HOURS NASDAQ NOTIFICATION REQUIREMENT

Last week, the Securities and Exchange Commission issued a Release<sup>1</sup>, which made immediately effective a rule change proposed by The Nasdaq Stock Market LLC to Nasdaq Rule 5250 and IM-5250-1, modifying the prior notification requirements for when Nasdaq listed companies release material information outside of Nasdaq market hours (7:00 a.m. to 8:00 pm. ET).

Prior to the rule change, Nasdaq listed companies were required to provide disclosure to Nasdaq's MarketWatch Department at least ten minutes prior to the public release of material information that would reasonably be expected to affect the value of the companies' securities or influence investors' decisions. The requirement of prior notification is to allow Nasdaq to determine whether a trading halt for the companies' securities is appropriate. Under the revised Rule 5250 and IM-5250-1, if a company listed on Nasdaq publicly releases material information outside of Nasdaq market hours, it must notify Nasdaq's MarketWatch Department of the material information prior to 6:50 a.m. ET. The ten minute prior notification requirement remains in effect for public releases of material information during Nasdaq market hours.

IM 5250-1 sets forth a non-exclusive list of information that is considered to be material:

- Financial-related disclosures, including quarterly or yearly earnings, earnings restatements, preannouncements or "guidance."
- Corporate reorganizations and acquisitions, including mergers, tender offers, asset transactions and bankruptcies or receiverships.
- New products or discoveries, or developments regarding customers or suppliers (e.g., significant developments in clinical or customer trials, and receipt or cancellation of a material contract or order).
- Senior management changes of a material nature or a change in control.
- Resignation or termination of independent auditors, or withdrawal of a previously issued audit report.



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- Events regarding the Company's securities — e.g., defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, or public or private sales of additional securities.
- Significant legal or regulatory developments.
- Any event requiring the filing of a Form 8-K.

Nasdaq-listed companies should review their disclosure practices and procedures and establish adequate controls to ensure timely compliance with the pre-notification requirements.

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<sup>1</sup> Release No. 34-61521; File No. SR-NASDAQ-2010-008, Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Prior Notification Requirements When Companies Release Material Information Outside of Nasdaq Market Hours.

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