



SEC Greenlights Nasdaq's Proposed Rule Change on Bid Price Compliance

OCTOBER 22, 2024

On October 7, 2024, the U.S. Securities and Exchange Commission (SEC) approved a Nasdaq-proposed amendment to Nasdaq Rule 5810(c)(3) (the Amendment), which impacts Nasdaq's minimum bid price requirement and reverse stock splits on the exchange. Previously, in July 2024, the SEC posted a Nasdaq rule change proposal aimed at addressing situations where a listed company takes action to comply with Nasdaq's minimum bid price requirement but inadvertently violates another listing requirement in the process. This proposal was primarily focused on reverse stock splits, a common method that companies use to increase the minimum bid price, which must be at least \$1 per share under Nasdaq Rule 5550(a)(2) (the Bid Price Requirement). However, while reverse splits may help achieve compliance with the Bid Price Requirement, they can also trigger non-compliance with other rules, particularly regarding the number of publicly held shares or the number of shareholders.

Nasdaq argued that the previous rules were overly complex and confusing for investors. Under the previous rules, if a reverse stock split caused non-compliance with another listing requirement, a company would be granted a new compliance period to address the new deficiency. Nasdaq believed this process was too permissive and could undermine investor confidence, as it ultimately gave companies more time to resolve issues that arose from their own corrective actions.

In response to these concerns, the new rules eliminate the additional compliance period when a company becomes non-compliant with another listing requirement after a reverse stock split. Instead, companies must resolve both the original bid price deficiency and any new deficiencies simultaneously before they can be considered fully compliant.

Pursuant to the updated rules, companies listed on Nasdaq must maintain a \$1 minimum bid price and maintain this threshold for 30 consecutive business days in order to avoid receiving a deficiency notice. To regain compliance with the Bid Price Requirement, a company has 180 calendar days to meet the \$1 bid price for a minimum of 10 consecutive business days. In addition, a company must comply with the other requirements under Nasdaq's respective tiers, such as the minimum number of publicly held shares and the total number of shareholders, during this period. If a company fails to satisfy either of those requirements, or any other continued listing requirements, under Nasdaq Rule 5810(c)(2)(A), a company has 45 calendar days to provide Nasdaq with a plan to regain compliance and resolve any deficiencies related to these standards. Under Nasdaq Rule 5810(c)(2)(B), Nasdaq staff may grant an extension of the compliance period of up to 180 calendar days.

Under the new rules, if a company conducts a reverse stock split to regain compliance with the Bid Price Requirement, but falls out of compliance with another listing requirement (i.e., the total number of publicly held shares or number of shareholders), it will not be granted a new compliance period. The company will remain non-compliant with the Bid Price Requirement until both (i) the new deficiency is cured and (ii) the stock price meets the \$1 threshold for a minimum of 10 consecutive business days. If the company fails to resolve both issues during the compliance period for the initial bid price deficiency, Nasdaq will issue a delisting determination letter.

This Amendment introduces a more straightforward and transparent process, reducing the potential for companies to delay delisting by fixing one issue while creating another. Nasdaq has clarified that its staff may still exercise discretion to extend the 10-day compliance period for meeting the bid price requirement, but this extension is not automatic.

The implications of these recently proposed changes may make reverse stock splits a less effective tool for regaining compliance with Nasdaq's listing requirements. Companies should carefully consider the broader impact of such actions on their overall compliance status.

For more information about the Amendment or if you have any questions, please contact the authors of this blog post or your regular Winston contacts.

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