

SECURITIES ALERT

NASDAQ NOW REQUIRES NOTIFICATION 10 MINUTES PRIOR TO RELEASING MATERIAL INFORMATION

The Securities and Exchange Commission (SEC) recently approved a change to Nasdaq Rule 5250(b)(1) and IM-5250-1 that now requires (rather than merely recommends, as in the prior rule) Nasdaq-listed companies to notify Nasdaq at least 10 minutes prior to releasing material information to the public.¹ Such notice must be made, except in emergency situations, through the electronic disclosure submission system available at www.nasdaq.net. Nasdaq believes that requiring such notice prior to the public release of news is appropriate, so it can consider whether trading in the security should be temporarily halted.

The rule change also modifies language in IM-5250-1 that is inconsistent with an SEC interpretive release that provides guidance on the use of company Web sites.² The SEC guidance provides that posting information on a company Web site could be considered a sufficient method of public disclosure under Regulation FD in certain circumstances. This guidance was inconsistent with Nasdaq rules indicating that posting information on a Web site does not by itself satisfy Regulation FD. Nasdaq has now softened its language to provide that posting information on a company Web site may not by itself be considered a sufficient method of public disclosure under Regulation FD and SEC guidance and releases thereunder, and as a result, under Nasdaq rules.

CONTACT INFORMATION

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¹ SEC Release No. 34-61008 (Nov. 16, 2009).

² SEC Release No. 34-58288 (Aug. 1, 2008).