FENWICK & WEST LLP

CORPORATE & SECURITIES LAW UPDATE

Nasdaq Proposes New Corporate Governance Rules

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On July 25, 2002, Nasdaq announced that its board of directors has approved wide-ranging corporate governance rule changes that it will submit to the SEC for approval. When these rules are approved by the SEC, they will apply to all companies trading on the Nasdaq National Market and the Nasdaq SmallCap Market.

The rules seek to enhance corporate accountability and transparency for the benefit of investors, by changing substantive listing standards in many areas, including:

- Board independence
- Audit committees
- Independent compensation and nominating committees
- Shareholder approval of stock option plans
- Reporting of stock transactions by insiders
- Codes of Conduct and continuing education of directors

These proposals supplement and modify the proposals that Nasdaq announced in May 2002.

Board Independence
A majority of a company's board members must be independent and the independent directors must meet regularly in executive session.

The definition of an "independent" director would be further narrowed to exclude large shareholders, relatives of executives, and employees of outside auditors, and require a three-year "cooling off" period for all non-independent directors before they can be considered independent.

Audit committees
Audit committees would have the sole authority to hire and fire independent auditors and to approve all non-audit related services. They would also have the authority to retain legal, accounting and other experts. Nasdaq has already proposed that audit committees must approve all related party transactions.

Compensation and Nominating Committees
Executive officer compensation must be approved by an independent compensation committee or by a majority of the independent directors. Director nominations must be approved by an independent nominating committee or by a majority of the independent directors.

Stock options

Shareholder approval of all stock option plans would be required, with exemptions for ESOPs, options assumed in acquisitions and inducement options. Existing non-shareholder approved plans would be grandfathered.

Reporting of stock transactions by insiders

Insiders transactions in company stock exceeding $100,000 would be reported by the company within two business days.

Codes of conduct and director education

Companies must implement codes of conduct that specifically address conflicts of interest and compliance with laws and include enforcement mechanism. Companies must make their code of conduct public and disclose conflict of interest waivers granted to officers and directors.

Nasdaq also indicated it would be considering additional rules relating to director education.

When will the proposed rules take effect?

Nasdaq plans to submit the proposed rules to the SEC in the near future. The SEC will then set a period of at least 60 days for review and comment of these rules before they become final.

Please be aware that the Nasdaq proposals overlap with similar provisions in rule proposals from the SEC and in the current corporate responsibility bill recently approved by Congress.

If you have any questions about this proposal, please contact Horace Nash (hnash@fenwick.com), Jeffrey Vetter (jvetter@fenwick.com) or Robert Freedman (rfreedman@fenwick.com) all of whom helped to prepare this update. You may also contact any member of your Fenwick & West team or mail to: fwcsu@fenwick.com.