



July 5, 2006

Ms. Nancy M. Morris
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: Proposed NASDAQ Rule to Modify the Cure Period for Replacing an
Independent Director or Audit Committee Member
(File No. SR-NASDAQ-2006-011)

Dear Ms. Morris:

America's Community Bankers ("ACB")¹ is pleased to comment on The NASDAQ Stock Market LLC ("NASDAQ") proposed change to its Rule 4350 governing independent directors and audit committee members. The proposed rule change was filed by NASDAQ with the Securities and Exchange Commission ("SEC") and published on June 14, 2006 in the *Federal Register* for public comment (71 FR 34408-10). The SEC will act on the final rule. The proposed rule change provides a minimum 180-day cure period for companies to fill vacancies when a member of the board of directors or audit committee leaves the board or ceases to be independent. The cure period allows the company to remain in compliance with NASDAQ requirements for listing purposes.

ACB Position

ACB supports the proposed change to NASDAQ Rule 4350 to provide a minimum cure period of 180-days. This minimum cure period gives a company time to find a qualified replacement for independent directors or audit committee members who leave the board or cease to be independent. The 180-day period begins from the date there is a vacancy on the board or the audit committee, or a director is no longer independent through no fault of the director. The 180-day cure period is particularly helpful for community banks and other small companies that need the additional time to conduct an appropriate search and recruit an independent director to serve on its board or audit committee. The 180-day cure period allows companies to remain in compliance with NASDAQ rules and maintain their NASDAQ listing.

Background

NASDAQ Rule 4350 requires listed companies to have a board of directors comprised of a majority of independent directors and an audit committee that is comprised of at least three

¹ America's Community Bankers is the national trade association committed to shaping the future of banking by being the innovative industry leader strengthening the competitive position of community banks. To learn more about ACB, visit www.AmericasCommunityBankers.com.

Ms. Nancy M. Morris
Securities and Exchange Commission
Washington, DC
July 5, 2006
Page -2-

independent board members. If a director leaves the board or ceases to be independent through no fault of the director, the rule provides a cure period.

The current cure period requires a company to fill the vacancy with an independent director at the earlier of the company's next annual shareholders' meeting or one year from the date of the vacancy or the date the director ceases to be independent. This cure period, however, has caused anomalous results for a company when a director resigns or is no longer considered independent shortly before the annual shareholders' meeting. When this occurs, there is usually not enough time to conduct a search for a candidate who meets the NASDAQ independence requirements, fill the vacancy, and remain compliant with the NASDAQ listing requirements. This creates a hardship for listed companies.

ACB believes that the existing rule creates a particular hardship for community banks and smaller companies that may have more challenges recruiting new independent directors. Community banks undertake substantial efforts to find qualified directors willing to serve on a board and its audit committee. Community banks seek to nominate individuals from the community the bank serves, and this narrows the field of candidates. In addition, in order to competently perform their oversight role and exercise independent judgment, bank directors must not only understand corporate and securities laws, but understand and apply a full range of banking laws and regulations.

The modification to Rule 4350 allows companies to have 180-days from when a vacancy on the board or audit committee or when a director ceases to be independent due to circumstances that are no fault of the director. The cure period also allows a company to remain in compliance with NASDAQ requirements and listed while the company conducts its search for a new independent director.

Conclusion

Thank you for the opportunity to comment on this matter. Should you have any questions, please contact Patricia A. Milon at 202-857-3121, or via e-mail at pmilon@acbankers.org, or the undersigned at 202-857-3186, or via e-mail at slachman@acbankers.org.

Sincerely,



Sharon H. Lachman
Regulatory Counsel