

April 1, 2005

VIA E-MAIL

Jonathan G. Katz
Secretary
Securities and Exchange Commission
450 Fifth Street, NW
Washington, DC 20549-0609

**Re: File No. SR-NASD-2004-125 – Notice of Filing of Proposed Rule Change
Regarding Procedures for Denying Listing on Nasdaq**

Dear Mr. Katz:

We welcome the opportunity to submit the following comments on the proposed rule change regarding the procedures for denying companies initial or continued listing on The Nasdaq Stock Market (“Nasdaq”). We commend Nasdaq and the Securities and Exchange Commission (“Commission”) for their efforts to clarify these listing standard procedures. We believe, however, that the proposed limitations on the amount of time that may be granted by a Nasdaq Listing Qualifications Panel (“Panel”) or a Nasdaq Listing and Hearing Review Council (“Listing Council”) for exceptions from the NASD Rule 4800 Series listing standards may not allow listed companies to adequately respond to and correct listing standard deficiencies.

Pursuant to NASD Rule 4810(b), “[a]n issuer may file a written request for an extension of time to comply with any of the standards set forth in the Rule 4000 Series or an exception to those standards at any time during the pendency of a proceeding under the Rule 4800 Series.” Rule 4810(b) also provides that “[t]he Association may grant extensions or exceptions where it deems appropriate.” Significantly, Rule 4810(b) does not prescribe any specific time limits on such extensions or exceptions. Rather, the amount of time granted by a Panel or Listing Council is typically determined by the specific circumstances of each matter.

Nasdaq has now proposed amending Rule 4810(b) (to be redesignated as NASD Rule 4802(b)) to limit the amount of time that may be granted by a Panel or Listing Council for exceptions from the listing standards set forth in the NASD Rule 4800 Series. Specifically, the proposed rule change limits a Panel to an exception for up to 90 days from the date of its decision, and the Listing Council to an exception for up to 60 days from the date of its decision. The proposed rule change also contemplates that “[n]o other exceptions would be permitted.”

We believe that this proposed rule change fails to adequately account for the increasing complexities of the business and regulatory environment, and is therefore counterproductive for several reasons:

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First, a company subject to delisting must provide a Panel with a “definitive plan” to regain compliance with Nasdaq’s listing standards by a certain date. Although the proposed rule change appears to clarify the range of possible dates that a company may propose in its “definitive plan,” the 90-day or 60-day exception that may be granted by a Panel or Listing Council is calculated “from the date of its decision.” The date of decision is not fixed and may be subject to circumstances outside the control of the listed company. Accordingly, the proposed rule change provides insufficient practical guidance to companies subject to delisting.

Second, the time limits contemplated by the proposed rule change require a deficient company to propose and execute a plan of compliance to correct the deficiency by an arbitrary date, irrespective of whether such a time frame is feasible or such a plan is in the best interests of the company’s shareholders. For example, a company with a viable plan to return to compliance in 91 days from the date of a Panel’s decision, rather than the 90 days specified in the proposed rule change, would, nevertheless, automatically be delisted under the proposed rule change.

Third, the proposed rule change does not permit a Panel or Listing Council to grant additional time for deficiencies based on the failure to comply with Marketplace Rule 4310(c)(14), which requires Nasdaq listed companies to be current in their filings with the Commission. Filing deficiencies often raise complex accounting and regulatory issues that require significant input from a company’s outside advisors. Based on our experience representing listed companies with such filing deficiencies, we believe that a Panel or Listing Council should have greater discretion to enlarge the time limit for listed companies to respond to and correct filing deficiencies.

For all the above reasons, we respectfully submit that these provisions concerning the amount of time that may be granted by a Panel or Listing Council for exceptions from the NASD Rule 4800 Series listing standards should be interpreted as guidelines, rather than strict requirements, such that a Panel or Listing Council would be permitted to deviate from these proposed time limits as the circumstances warrant. Moreover, these guidelines should provide for an advisory time limit of up to 180 days for filing deficiencies.¹

¹ We note that David A. Donohoe, Jr., President of Donohoe Advisory Associates, LLC, and formerly Chief Counsel for Nasdaq’s Office of Listing Qualification Hearings, has also submitted a comments letter to the Commission dated March 25, 2005. We concur with Mr. Donohoe’s comments stated therein.

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Thank you for your consideration. If you have any questions, please feel free to contact us at (703) 734-3100.

Very truly yours,

WILSON SONSINI GOODRICH & ROSATI
Professional Corporation

A handwritten signature in black ink, appearing to be a combination of the names Lyle Roberts and H. Hubert Yang, written in a cursive style.

Lyle Roberts
H. Hubert Yang