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*The information contained in this Client Alert is a brief summary of The Nasdaq Stock Market's press release dated September 27, 2001. For more information concerning The Nasdaq Stock Market's actions, please contact the Mintz Levin attorney who handles your corporate and securities matters.*

# Client Alert

October 1, 2001

## SECURITIES LAW

### The NASDAQ Stock Market Takes Actions to Help Companies Remain Listed

As a result of the extraordinary events on September 11, 2001, and their subsequent impact on trading markets, The Nasdaq Stock Market, Inc. announced on September 27, 2001, that it has suspended the minimum bid price and market value of public float requirements for continued listing on The Nasdaq National Market and The Nasdaq SmallCap Market until January 2, 2002. Companies that fail to meet the Nasdaq's minimum bid price and/or market value of public float requirements for 30 consecutive days are normally subject to de-listing proceedings, unless the company can demonstrate compliance with those requirements for ten consecutive days during a 90-day grace period that immediately follows the initial 30-day period of non-compliance. Until January 2, 2002, a company's failure to satisfy the minimum bid price and market value of public float requirements will have no de-listing consequences.

While the Nasdaq's suspension of these two continued listing requirements was welcome news for many companies faced with the risk of de-listing, the announcement left unanswered several important questions about the impact of the moratorium after January 2, 2002, when the requirements are currently scheduled to be reinstated. In conversations with several members of Nasdaq's staff, we have confirmed the following important consequences of Nasdaq's actions:

- Pending de-listing proceedings that were based solely on a company's failure to satisfy the minimum bid price and/or market value of public float requirements will be cancelled.
- Companies that were either in the initial 30-day period of non-compliance with respect to the requirements or the 90-day grace period during which they were attempting to re-establish compliance with such requirements will have their existing defaults with respect to the requirements erased.

In short, all Nasdaq listed companies will start with a "clean slate" as relates to the minimum bid price and market value of public float requirements on January 2, 2002. Moreover, Nasdaq has indicated that, before that date, it will consider whether it is appropriate to recommend further and more permanent action with respect to de-listings and listing qualifications.

The minimum bid price for continued listing is currently either \$1.00 or \$3.00 per share (depending on the initial listing standard used) on The Nasdaq National Market and \$1.00 per share on The Nasdaq SmallCap Market. The minimum market value of public float requirement for continued listing on The Nasdaq National Market is \$5 million or \$15 million (depending on the initial listing standard used) and \$1 million on The Nasdaq SmallCap Market. Companies should note that the moratorium with respect to compliance with these listing requirements does not affect de-listing proceedings based on The Nasdaq Stock Market's *other* continued listing requirements, including minimum stockholders' equity, net income and number of shareholders, among others.