



February 11, 2005

## **NASDAQ Announces Changes to Listing Standards Affecting Foreign Issuers**

NASDAQ would like to inform you of several important changes to our listing requirements that may affect your company.

### **Changes to Corporate Governance Exemptive Process**

On January 31, 2005, NASDAQ submitted proposed changes to NASD Marketplace Rule 4350(a)(1)<sup>1</sup>, to permit foreign private issuers to follow certain home country corporate governance practices without the need to seek an individual exemption from NASDAQ.<sup>2</sup> The effect of this change will be to substantially conform NASDAQ's procedures in this area to those of other U.S. markets. This proposal is expected to become effective on March 3, 2005.

Under the current rules, a foreign private issuer listed on NASDAQ that seeks to obtain an exemption from NASDAQ's corporate governance standards must demonstrate that NASDAQ's requirements are contrary to the laws, rules, regulations or generally accepted business practices of the issuer's home country, and the issuer must formally request an exemption from NASDAQ. In addition, the current rule requires a foreign private issuer to disclose the receipt of a corporate governance exemption in the issuer's annual filings with the U.S. Securities and Exchange Commission (SEC).

Under the new rules, a foreign private issuer is no longer required to request an exemption from NASDAQ's corporate governance standards, but instead must provide NASDAQ with a letter from outside counsel in the issuer's home country certifying that the issuer's practices are not prohibited by home country law. This letter is only required once, prior to the time the issuer first adopts a non-conforming practice. A foreign private issuer that previously received an exemption from NASDAQ pursuant to current Rule 4350(a) may continue to rely on that exemption, and need not submit any additional information to NASDAQ unless it determines to adopt another non-conforming governance practice.<sup>3</sup> The new rules do not change the existing requirement that a foreign private issuer must disclose in its annual reports filed with the SEC each requirement of Rule 4350 that it does not follow, and the alternative home country practice it does follow.

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<sup>1</sup> Complete details of the rule filing are contained in SR-NASD-2005-018, and may be found at the "Corporate/Listing" section of our website, [www.nasdaq.com](http://www.nasdaq.com). For authoritative guidance, issuers must consult the actual text of the new rule and the rule filing, and not rely on statements in this communication.

<sup>2</sup> The terms "foreign private issuer" and "home country" are defined in SEC regulations. A foreign issuer that does not qualify as a foreign private issuer is not eligible for any exception or exemption based on its country's laws or practices.

<sup>3</sup> An issuer may not, however, rely on a previously provided exemption if the listing requirement to which the exemption applies was changed after the exemption was provided.

Please be advised that the new rule does not exempt issuers from complying with those requirements of Rule 4350 that are mandated by U.S. securities laws and regulations. As such, all foreign private issuers are still required to comply with the audit committee requirements of Rule 10A-3 under the Securities Exchange Act of 1934. All foreign private issuers must also continue to comply with the listing agreement requirement, the requirement of prompt notification of material non-compliance, and the requirement to disclose receipt of a going concern opinion.

NASDAQ believes these changes will benefit non-U.S. issuers by significantly reducing their compliance costs, while at the same time benefiting shareholders by maintaining the high level of transparency provided by the current rule.

### **Filing of Interim Financial Reports**

NASDAQ has also submitted a new rule proposal to the SEC to require non-U.S. issuers to provide, in a press release, which would also be submitted on a Form 6-K, an interim balance sheet and semi-annual income statement, no later than six months following the end of the issuer's second fiscal quarter<sup>4</sup>. While most non-U.S. issuers listed on NASDAQ already provide such information voluntarily, the adoption of this requirement will assure that investors have access to recent information from all such issuers. Under the proposed rule, the information provided will be required to be translated into English, but will not have to be reconciled to U.S. Generally Accepted Accounting Principles (U.S. GAAP). In order to allow sufficient time for issuers to achieve compliance with this new requirement, NASDAQ has proposed that it not be immediately effective; instead, it will be effective for fiscal periods ending after January 1, 2006.

### **Minimum Bid Price and Market Value of Publicly Held Shares Requirements**

Lastly, please be advised that NASDAQ recently amended NASD Rule 4320<sup>5</sup> to require non-Canadian foreign issuers listed on The NASDAQ SmallCap Market to be subject to the same minimum \$1 bid price and \$1 million market value of publicly held shares requirements for continued listing as are domestic and Canadian issuers. To facilitate an orderly transition period, these requirements will not become effective until May 29, 2006.

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<sup>4</sup>See SR-NASD-2005-006 at [www.nasdaq.com](http://www.nasdaq.com).

<sup>5</sup>See SR-NASD-2004-147 at [www.nasdaq.com](http://www.nasdaq.com).