

SEC Updates “Covered Securities” Definition to Include Nasdaq Capital Market Securities

Offers and sales of securities listed, or authorized for listing, on the Nasdaq Capital Market will be exempt from state securities law filing requirements as a result of an amendment taking effect May 24, 2007. The U.S. Securities and Exchange Commission (SEC) has adopted an amendment to Rule 146 under the Securities Act of 1933 to include securities listed, or authorized for listing, on the Nasdaq Capital Market tier of NASDAQ in its list of “covered securities.”

What are “covered securities”?

Covered securities are now defined to include securities listed, or authorized for listing, on the following markets and exchanges:

- New York Stock Exchange (NYSE)
- American Stock Exchange (Amex)
- The Nasdaq Global Market
- The Nasdaq Capital Market
- Tier I of NYSE Arca, Inc.
- Tier 1 of the Philadelphia Stock Exchange, Inc.
- The Chicago Board Options Exchange, Incorporated
- International Securities Exchange, LLC (options)

Why exempt the Nasdaq Capital Market?

The SEC determined that the listing standards currently in place for the Nasdaq Capital Market are substantially similar to the listing standards of previously identified markets and exchanges. Listing standards for the Nasdaq Capital Market can be found at the NASDAQ corporate Web site, at www.nasdaq.com/about/listing_information.stm.

How will this affect a company that is listed on the Nasdaq Capital Market?

Offerings commenced on or after May 24, 2007: An issuing company may claim the “covered securities” exemption from state “Blue Sky” filing requirements for the offer and sale of securities in a particular state.

Offerings commenced prior to May 24, 2007, but closed on or after May 24, 2007: An issuing company may claim the “covered securities” exemption from state “Blue Sky” filing requirements for the sale of securities into a particular state, but will need to comply with “Blue Sky” filing requirements applicable to offers of securities into a state made prior to May 24, 2007.

If you have any questions about Nasdaq Capital Market listing requirements or whether your company’s securities might now be considered “covered securities,” please contact your Briggs and Morgan attorney or a member of our Securities Group, including:

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