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Listing Council Decision 2002-1

- **Net Tangible Assets/Shareholders' Equity**

Rules 4450(a)(3) and 4450(b)(1): $4,000,000 net tangible assets/$10,000,000 shareholders' equity, or its alternatives, the $50,000,000 market value of listed securities/$50,000,000 total assets and $50,000,000 total revenue requirements, for continued listing on the National Market.

Issue: The company no longer satisfied the net tangible assets/shareholders' equity requirement for the National Market. The company stated that it was in negotiations with investors to complete several proposed private placements to regain compliance.

Determination: The company was properly transferred to the SmallCap Market. The company's plan of compliance was not definitive. The company did not make any public announcements or provide the Listing Council with any information indicating that it had entered into any definitive agreements with investors. The company did not comply with the National Market net tangible assets/shareholders' equity continued listing requirements, but complied with all the requirements for continued listing on the SmallCap Market.

Listing Council Decision 2002-2

- **Net Tangible Assets/Shareholders' Equity**
- **Publicly Held Shares**
- **Independent Directors and Audit Committee Composition**
- **Annual Meeting and Proxy Solicitation**
- **Related Party Transactions**
- **Voting Rights**

Rule 4310(c)(2): $2,000,000 net tangible assets/$2,500,000 shareholders' equity requirement, or its alternatives, for continued listing on the SmallCap Market.

Issue: The company no longer satisfied the net tangible assets/shareholders' equity requirement. The company provided projections and stated it would be in compliance after certain reorganization transactions were consummated.

Determination: The company was properly delisted for failure to comply with the net tangible assets/ shareholders' equity requirement. Even assuming that the company's projections were accurate, the company would soon fall below the net tangible assets/shareholders' equity requirement based on the company's history of losses.

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Rule 4310(c)(7): 500,000-share public float requirement for continued listing.

Issue: The company's proxy statement reflected that the company had less than 500,000 shares in the public float. The company stated it had in excess of 500,000 shares in the public float, assuming conversion of its preferred stock.

Determination: The company was properly delisted for failure to comply with the public float requirements. The public float requirement is based solely on shares issued and outstanding.

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Rules 4350(c) and 4350(d)(2): Independent director and audit committee composition requirements.

Issue: One of the three members of the audit committee beneficially owned approximately 90% of the company.

Determination: The company was properly delisted for failure to demonstrate compliance with the independent director and audit committee composition requirements. A director, who has the ability to directly or indirectly control the company through 90% ownership, is an affiliate of the company, as referred to in Rule 4200(a)(14)(A), and accordingly, he is not independent. The company did not disclose in its proxy statement a basis for an exception to the audit committee composition requirements, pursuant to Rule 4350(d)(2)(B).

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Rules 4350(g) and 4350(e): Annual meeting and proxy solicitation requirements.

Issue: The company did not hold an annual shareholder meeting or mail proxy statements for 2½ years, while it was resolving a takeover contest and related litigation.

Determination: The company was properly delisted for failure to comply with the annual shareholder meeting and proxy solicitation requirements. An unresolved takeover contest and related litigation is an insufficient reason to violate the proxy solicitation and annual meeting requirements.

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Rule 4350(h): Requirement for independent review of related party transactions for conflicts of interest.

Issue: The company, the chief executive officer, a director and a shareholder group led by the director entered into related party transactions and, as majority shareholders, approved the transactions. The company provided minutes of meeting, reflecting the existence of a special committee of directors.

Determination: The company was properly delisted for failure to demonstrate that the company's audit committee or a comparable body of the board of directors reviewed the transactions for conflicts of interest. The minutes did not reflect that the audit committee or an independent committee reviewed the transactions for conflicts of interests. The minutes did not state whether the special committee reviewed the transactions for conflicts of interests or which directors were on the special committee.

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Rule 4351: Voting rights requirement.

Issue: The company issued convertible preferred shares to investors at a discount to the market price on the date the investors and the company entered into a stock purchase agreement. The company's majority shareholders approved the transaction. The preferred shareholders had the right to vote their shares on an as-converted basis at the company's annual shareholder meeting. To determine whether a voting rights violation exists, the preferred shareholders' voting rights are compared to their relative contribution based on the company's market value at the time of issuance of the preferred shares. The company stated that for purposes of the voting rights rule, the time of issuance of the preferred stock should be the date the letter of intent was signed, not the date the shares were issued.

Determination: The company was properly delisted for failure to comply with the voting rights requirements. In determining whether a voting rights violation exists, the execution date of a non-binding agreement cannot be the basis for determining the value of the securities because the value is not definitive if the agreement is unenforceable and the terms can be changed. The company created a new class of securities that vote at a higher rate than the existing common shareholders, and shareholders cannot otherwise agree to permit a voting rights violation by the company through approval of the transaction.

Listing Council Decision 2002-3

- **Net Tangible Assets/Shareholders' Equity**
- **Bid Price**

Rule 4310(c)(2): $2,000,000 net tangible assets/$2,500,000 shareholders' equity requirement, or its alternatives, for continued listing on the SmallCap Market.

Issue: The company no longer satisfied the net tangible assets/shareholders' equity requirement. Based on the company's plan to raise equity in the near term, the Panel determined to continue listing the company's securities subject to the company providing executed subscription agreements, absent any material contingencies, to the Panel. Following the Panel's determination, the company definitively stated that it would not be able to enter into binding subscriptions prior to the Panel's deadline. The Panel then delisted the company. Two days after the Panel's delisting decision, the company stated that it had received a binding subscription agreement from an investor, which would bring it into compliance with the shareholders' equity requirement. The agreement was conditioned upon the company maintaining the listing of its securities on The NASDAQ Stock Market at all times prior to the funding.

Determination: The company was properly delisted for failure to comply with the Panel's exception and the net tangible assets/shareholders' equity requirement. The Panel may provide a company with an exception to the continued listing requirements, if it believes that a company may come into compliance with the requirements in the near term. Once it becomes clear that a company cannot comply with the terms of the exception by the expiration date (even if such information is provided prior to the expiration date), the Panel may in its discretion immediately delist the company. Furthermore, the company's contemplated transaction pursuant to the subscription agreement did not appear feasible due to the material condition that could not be satisfied.

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Rule 4310(c)(4): $1 minimum bid price requirement for continued listing on the SmallCap Market.

Issue: The bid price of the company's common stock was below $1. The company believed its common stock price would increase, if its securities were relisted on the SmallCap Market. It also believed that its stock price would rise as a result of recent news announcements related to its products.

Determination: The company was properly delisted for failure to comply with the minimum bid price requirement. Anticipated favorable market reaction is not a definitive plan to regain compliance with the minimum bid price requirement.

Listing Council Decision 2002-4

- **Filing**

Rule 4310(c)(14): The issuer shall file with NASDAQ all reports and other documents required to be filed with the Securities and Exchange Commission ("SEC"). Annual reports filed must contain audited financial statements.

Issue: The company filed a Form 10-K that did not contain the audit opinion of its independent auditor. The company was in the process of restating its financial statements for the prior two fiscal years following SEC allegations that the company made material misrepresentations and omissions in its public reports and press releases. At the time of the Listing Council decision, the company had still not made the necessary filings.

Determination: The company was properly delisted for failure to comply with the filing requirement. The Listing Council takes seriously the requirement to file accurate and reliable financial statements, and the concomitant purpose to provide investors with current information regarding the company. Investors in securities listed on NASDAQ are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934. In this case, however, investors did not have access to accurate financial information regarding the company for the previous two fiscal years. Furthermore, in the absence of accurate and reliable financial statements, Staff was unable to determine if the company was in compliance with all of the NASDAQ continued listing requirements.

Listing Council Decision 2002-5

- **Public Interest**
- **Bid Price**

Rules 4300 and 4330(a)(3): NASDAQ may exercise its discretion in applying additional or more stringent criteria for initial or continued inclusion or suspend or terminate the inclusion of an otherwise qualified security if NASDAQ deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest.

Issue: Staff's investigation revealed a stock exchange settlement agreement involving a director of the company, who was also an officer and significant shareholder. The agreement, in which the director acknowledged the facts in the agreement as true and correct, set forth the regulatory history of the director, including misrepresentations to the stock exchange and numerous serious violations of sales practice regulations, which occurred in the mid-1990's. The company stated that it made good faith efforts to address Staff's concerns through the director's resignation from the board and his position as an officer. In addition, the director provided irrevocable proxies for his voting rights to the independent directors of the company.

Determination: The company was properly delisted based on public interest concerns. The Listing Council believed that the stock exchange findings constituted a pattern of fraudulent behavior towards public investors. Furthermore, the director continued to exert influence over the company as a significant shareholder and an employee serving in an important role. Although the director provided irrevocable proxies to independent directors, the proxies expired in two years, and the director was not prevented from disposing of his shares or purchasing and voting additional shares of the company prior to such time.

The director's admitted past violations of the stock exchange securities regulations and his continued influence over the company raised the risk of future violations of securities laws and regulations and provided grounds for denying the company's request for continued listing in order to protect the quality of and public confidence in The NASDAQ Stock Market and to protect investors and the public interest. The Securities and Exchange Commission ("SEC") has held that "the risk associated with investing in NASDAQ is market risk rather than the risk that the promoter or other persons exercising substantial influence over the issuer is acting in an illegal manner."[1] The SEC has further held that "[b]oth the tax and the securities regulatory schemes depend on the honor, candor, and integrity of regulated persons to report accurately to the regulatory authority the information sought by such authority."[2]

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Rule 4310(c)(4): $1 minimum bid price requirement for continued listing on the SmallCap Market.

Issue: The bid price of the company's common stock was below $1. The company stated that its stock was below $1 for only two days prior to delisting and, therefore, had not been below $1 for the 30 consecutive business days as required by Rule 4310(c)(8)(B). The company maintained that its compliance with the minimum bid price requirement should therefore be evaluated based on the first 30 consecutive days after it begins trading on NASDAQ.

Determination: The company was properly delisted based on public interest concerns. Because the company did not comply with the minimum bid price requirement and did not have a definitive plan to regain compliance in the near term, it would be inappropriate to relist the company. In this regard, the SEC has determined that investors are entitled to assume that the securities on NASDAQ meet the listing requirements.

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[1] DHB Capital Group, Inc., Securities Exchange Act Rel. No. 37069 (April 5, 1996) (quoting Tassaway, Inc., Securities Exchange Act Rel. No. 34151 (March 13, 1975)).
[2] JJFN Services, Inc., Securities Exchange Act Rel. No. 39343 (November 21, 1997).

Listing Council Decision 2002-6

- **Bid Price**
- **Market Value of Publicly Held Shares**

Rules 4450(b)(4) and 4450(a)(5): $3, or its alternative $1, minimum bid price requirement for continued listing on the National Market.

Issue: The company's bid price was below $1. The company did not submit a plan to regain compliance, but requested additional time to meet the continued listing requirements following its recapitalization.

Determination: The company was properly delisted for failure to comply with the minimum bid price requirement. Approximately four months had elapsed since the completion of the recapitalization, and the company had not regained compliance. Additionally, the company did not provide a definitive plan to regain compliance in the near term or maintain compliance over the long term with the minimum bid price requirement. The company also did not comply with the alternative requirements for continued listing on the National Market or for continued listing on the SmallCap Market.

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Rule 4450(b)(3): Market value of publicly held shares of $15,000,000 for continued listing on the National Market.

Issue: The market value of publicly held shares of the company's common stock was below $15,000,000.

Determination: The company was properly delisted for failure to comply with the market value of publicly held shares requirement. The company did not provide any information indicating how it planned to regain compliance with the market value of publicly held shares requirement or maintain compliance over the long term.

Listing Council Decision 2002-7

- **Net Tangible Assets/Shareholders' Equity**
- **Bid Price**
- **Market Value of Publicly Held Shares**
- **Independent Director and Audit Committee Composition**

Rules 4450(a)(3) and 4450(b)(1): $4,000,000 net tangible assets/$10,000,000 shareholders' equity, or its alternatives, the $50,000,000 market value of listed securities/$50,000,000 total assets and $50,000,000 total revenue requirements for continued listing on the National Market.

Issue: The company no longer satisfied the net tangible assets/shareholders' equity continued listing requirement for the National Market. The company also did not comply with the alternative requirements for continued listing under Maintenance Standard 2 on the National Market, as set forth in Rule 4450(b). The company did not submit a plan to regain compliance with the National Market requirements, but requested that it be granted the opportunity to list its common stock on the SmallCap Market. The company submitted an unaudited consolidated balance sheet, which reflected shareholders' equity exceeding the SmallCap Market continued listing requirement.

Determination: The company was properly delisted for failure to satisfy the net tangible assets/ shareholders' equity requirement for continued listing on the National Market. The company did not submit a definitive plan to regain compliance with the net tangible assets/shareholders' equity requirement or to maintain compliance over the long term. The company also did not provide evidence of its ability to sustain compliance with the shareholders' equity requirement for continued listing on the SmallCap Market in the near or long term and did not meet any of the alternatives for the shareholders' equity requirement, as set forth in Rule 4310(c)(2)(B). The company would soon fall below the shareholders' equity requirement for continued listing on the SmallCap Market based on its projections and history of losses.

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Rule 4450(a)(5): $1 minimum bid price requirement for continued listing on the National Market.

Issue: The company's bid price was below $1. The company believed that if its common stock were listed on the SmallCap Market, the resulting increase in visibility and liquidity would increase its stock price, so that it could effect a reverse stock split to regain compliance with the $1 minimum bid requirement.

Determination: The company was properly delisted for failure to comply with the $1 minimum bid price requirement for continued listing on the National Market. The Listing Council is unwilling to rely on anticipated favorable market reaction in order to find that a company can regain compliance with the minimum bid price requirement. Although the company received shareholder approval for a reverse stock split more than eight months prior to the decision, the company did not announce a definitive date to effect such a reverse stock split.

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Rule 4450(a)(2): Market value of publicly held shares of $5,000,000 for continued listing on the National Market.

Issue: The market value of publicly held shares of the company's common stock was below $5,000,000 for more than four months. The company requested that it be granted the opportunity to list its common stock on the SmallCap Market.

Determination: The company was properly delisted for failure to comply with the market value of publicly held shares requirement. The company had not submitted a definitive plan to regain compliance with the publicly held shares requirement or maintain compliance over the long term. Although the company's market value of publicly held shares exceeded the SmallCap continued listing requirements, the company failed to evidence compliance with all of the SmallCap Market standards for continued listing.

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Rules 4350(c) and 4350(d)(2): Independent director and audit committee composition requirements.

Issue: For more than four months, the company's audit committee was only comprised of two members. The company stated that it expected to appoint a qualified audit committee member in the near future.

Determination: The company was properly delisted for failure to demonstrate compliance with the independent director and audit committee composition requirements. As of the date of the Listing Council's meeting on this matter, the company had not announced the appointment of a new independent director.

Listing Council Decision 2002-8

- **Shareholders' Equity**
- **Bid Price**
- **Shareholder Approval**

Rule 4310(c)(2): $2,500,000 shareholders' equity requirement, or its alternatives, for continued listing on the SmallCap Market.

Issue: Following the Panel's February decision to delist the company's securities based on a deficiency with the shareholders' equity requirement, the company regained compliance through the completion of several equity offerings. In July, the Listing Council issued a decision reversing the Panel's decision to delist the company's securities and remanded the matter to the Panel for further consideration, pursuant to an exception. Pursuant to its discretionary authority under Rule 4300, the Listing Council determined that the company's public filings for the following quarter must reflect shareholders' equity exceeding the minimum $2,500,000 continued listing requirement as a result of the company's history of operating losses. The company did not comply with the terms of the Listing Council's July decision.

Determination: In November, the Listing Council determined that the company's securities should not be relisted, based on its failure to comply with the shareholders' equity requirement, as set forth in the Listing Council's July decision.

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Rule 4310(c)(4): $1 minimum bid price requirement for continued listing on the SmallCap Market.

Issue: Pursuant to the Listing Council's July decision, the company was required to demonstrate a closing bid price of at least $1 per share within 90 days of the decision. However, the company's bid price remained below $1 during and after such period.

Determination: In November, the Listing Council determined that the company's securities should not be relisted, based on its failure to comply with the terms of the Listing Council's July decision and the minimum bid price requirement.

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Rule 4350(i)(1)(D): Shareholder approval requirement for a transaction other than an initial public offering involving the sale or issuance of common stock, or securities convertible into or exercisable for common stock, equal to 20% or more of the common stock or voting power outstanding before the issuance, for less than the greater of book or market value.

Issue: In its proxy statement, the company solicited shareholder approval for a non-specific transaction that set forth the maximum number of shares to be issued. The company disclosed in the proxy that such issuance might be at a discount to market and could exceed 20% of the company's outstanding common stock. Following shareholder approval of its proposal, the company issued preferred shares, but failed to provide in the transaction documents the maximum number of shares issuable in accordance with the shareholder proposal.

Determination: In November, the Listing Council determined that the company's securities should not be relisted, based on its failure to comply with the shareholder approval requirement. If shareholder approval for a transaction is necessary under NASDAQ rules, NASDAQ's policy requires that a company provide specific details to shareholders regarding the nature of the transaction; for example, the number of shares offered, the type of security being issued, the names of the investors and the purchase price. NASDAQ permits shareholder proposals for non-specific private placements, if shareholders have sufficient information to make a meaningful decision, including the maximum number of shares to be issued, the maximum dollar amount of the issuance, the maximum amount of discount (if any) to the market, and the time frame to complete the transaction (generally limited to three months). Although the company provided sufficient information to shareholders in the proxy statement, the transactional and corporate documents in the record on review did not evidence the maximum number of shares to be issued upon conversion of the preferred shares, as set forth in the shareholder proposal. Since the number of shares issuable upon conversion of the preferred shares potentially may exceed the maximum number set forth in the shareholder proposal, the company failed to comply with the shareholder approval requirements.

Listing Council Decision 2002-9

- **Reverse Merger**
- **Bid Price**

Rule 4330(f): An issuer must apply for initial inclusion following a transaction whereby the issuer combines with a non-NASDAQ entity, resulting in a change of control of the issuer and potentially allowing the non-NASDAQ entity to obtain a NASDAQ listing. In determining whether a reverse merger has occurred, NASDAQ will consider all relevant factors including, but not limited to, changes in the management, board of directors, voting power, ownership, and financial structure of the issuer. NASDAQ will also consider the nature of the businesses and the relative size of the NASDAQ issuer and non-NASDAQ entity.

Issue: Following a merger, shareholders of the non-NASDAQ entity controlled approximately 40% of the company. Former directors and officers of the company, who owned approximately 65% of the company prior to the transaction, owned approximately 23% after the transaction. The shareholders of the non-NASDAQ entity serving as directors and executive officers of the company owned no shares of the company prior to the transaction, but beneficially owned approximately 40% after the transaction. Such shareholders as a group constituted the single largest shareholder of the company.

Following the transaction, two out of five directors on the board resigned and were replaced by shareholders of the non-NASDAQ entity, and four out of the seven executive officers listed in the company's proxy statement were shareholders of the non-NASDAQ entity. The company asserted that no change of control occurred because shareholders of the non-NASDAQ entity did not acquire majority control of the company's common stock or board. The company also asserted that the financial structure and the relative sizes of the non-NASDAQ entity and the company did not indicate a reverse merger.

Determination: The company was properly delisted because it entered into a transaction that resulted in a reverse merger, and it did not meet the initial listing standards following the reverse merger. Even though the shareholders of the non-NASDAQ entity did not have majority control of the company, a significant change in the ownership structure had occurred. The transaction with the non-NASDAQ entity resulted in a change of control and significant changes to the company's management, board of directors, voting power, ownership, financial structure and business. The company's business was not similar to the non-NASDAQ entity, and the company's financial structure adversely changed as a result of the transaction. The company distributed substantial capital dividends shortly before the transaction and recorded significant goodwill as a result of the transaction. The company did not meet the requirements for initial listing on the SmallCap Market.

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Rule 4310(c)(4): $1 minimum bid price requirement for continued listing on the SmallCap Market.

Issue: The bid price of the company's common stock was below $1.

Determination: The company was properly delisted for failure to comply with the minimum bid price requirement. The company stated that it wanted to finalize the reverse merger issue before it resumed its investment in an aggressive investor relations program in order to regain compliance with the minimum bid price requirement. Because the company did not have a definitive plan to regain compliance in the near term, it would be inappropriate to relist the company's securities. In this regard, the Securities and Exchange Commission has determined that investors are entitled to assume that the securities on NASDAQ meet the listing requirements.[1]

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[1] See JJFN Services, Inc., Securities Exchange Act Rel. No. 39343 (November 21, 1997) (citing Tassaway, Inc., Securities Exchange Act Rel. No. 34151 (March 13, 1975)).

Listing Council Decision 2002-10

- **Public Interest**

Rules 4300 and 4330(a)(3): NASDAQ may exercise its discretion in applying additional or more stringent criteria for initial or continued inclusion or suspend or terminate the inclusion of an otherwise qualified security if NASDAQ deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest.

Issue: The company existed without an operating business for approximately one year at the time of the Listing Council's consideration of this matter and reflected zero revenues for nine months. The company employed less than ten people, and the expenses comprising its annual burn rate were compensation, occupancy cost, public company cost, legal fees and insurance. The company stated in public filings that it might be deemed an investment company because it owned investment securities with a value exceeding 40% of its total assets. However, if necessary, it planned to decrease its holdings in investment securities to avoid becoming subject to the requirements of the Investment Company Act of 1940. The company asserted that its tangible business operations were comprised of its interests in other entities, one of which it actively managed by attending board and weekly meetings. The company also noted that it held a substantial note receivable and cash.

Determination: The company was delisted based on public interest concerns that it was a public shell. The company did not have any direct management authority or a controlling interest in its most significant investment, and attending board and weekly regulatory meetings alone do not constitute tangible business operations. Its other most significant investment represented less than 1% of the company's total assets. Furthermore, the company did not provide any definitive documentation to evidence that it planned to acquire any complementary operations.

Investors would be afforded additional protections if the company registered as an investment company, because it would be subject to regulations regarding its operations, investments, capital structure, governance, and reporting of its results of operations. A company that is not registered as an investment company and has no tangible business operations may be considered a public shell even if it holds cash and securities, because such companies are subject to market abuses or other violative conduct detrimental to the interests of the investing public. Furthermore, prospective investors in such a company's securities are unable to determine the type of business in which they are investing. Investors' interest in the company's securities are based solely on existing investments, and the possibility of entering into investments, mergers, and acquisitions with other companies that have not as yet been identified.

Listing Council Decision 2003-1

- **Bid Price**
- **Shareholders' Equity**
- **Fees**

Rule 4310(c)(4): $1 minimum bid price requirement for continued listing on the SmallCap Market.

Issue: The bid price of the company's common stock was below $1 for more than one year. The company stated it had received board approval for a reverse stock split and had prepared preliminary proxy materials to be filed with the Securities and Exchange Commission.

Determination: The company was properly delisted for failure to comply with the minimum bid price requirement. The company did not demonstrate the ability to regain compliance in the near term or to maintain compliance over the long term. The company had not filed a preliminary proxy statement seeking shareholder approval for a reverse stock split to cure the bid price deficiency and did not expect to do so until it completed negotiations for the sale of one of its businesses.

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Rule 4310(c)(2): $2,500,000 shareholders' equity requirement, or its alternatives, for continued listing on the SmallCap Market.

Issue: The company no longer satisfied the shareholders' equity requirement. The company planned to regain compliance by disposing of one of its businesses, converting debt to equity and raising additional funds.

Determination: The company was properly delisted for failure to comply with the shareholders' equity requirement. The company did not provide any definitive documentation or timetable to indicate when the company expected to achieve its plan. Furthermore, the company had not filed a proxy statement to obtain shareholder approval for certain debt to equity conversions, as represented by the company during the Panel hearing.

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Rule 4310(c)(13): NASDAQ annual and listing of additional shares fees.

Issue: The company failed to pay NASDAQ annual and listing of additional shares fees.

Determination: The company was properly delisted for failure to pay the requisite annual and listing of additional shares fees. The annual fee was outstanding for more than six months, and the listing of additional shares fee was outstanding for more than one year.

Listing Council Decision 2003-2

- **Shareholders' Equity**
- **Bankruptcy**

Rules 4450(a)(3) and 4450(b)(1): $10,000,000 shareholders' equity, or its alternatives, $50,000,000 market value of listed securities or $50,000,000 total assets and $50,000,000 total revenue requirements, for continued listing on the National Market.

Rule 4450(f): NASDAQ may suspend or terminate an issuer's securities if the issuer files under any of the sections of the Bankruptcy Act, unless it is determined that the public interest and the protection of investors would be served by continued designation.

Issue: The company no longer satisfied the shareholders' equity requirement for the National Market. The company had filed a voluntary bankruptcy petition and reflected a shareholders' deficit for approximately one year. At the time of the Panel's decision, it was uncertain whether the company would conclude its restructuring proceedings in the near term.

Determination: The Panel's determination to delist the company's securities from The NASDAQ Stock Market was appropriate at the time of the decision. Based on events occurring after the Panel's decision, the Panel's decision was reversed. The company provided evidence that it consummated its restructuring process and emerged from the bankruptcy proceedings. Under Rule 4330(e), a security that has been terminated from NASDAQ must meet the initial listing requirements before re-inclusion. Following its restructuring, the company did not meet the National Market initial listing requirements, but did meet all of the SmallCap Market initial listing requirements, except for the $4 minimum bid price. However, because the company was below the $1 minimum bid price requirement for continued listing on the National Market for approximately three months, it was still within the 90-day grace period afforded to National Market issuers, as set forth in Rule 4450(e)(2). Accordingly, the Listing Council waived the $4 bid price requirement for initial listing on the SmallCap Market and instead required that the company meet the $1 continued listing bid price requirement.

The matter was remanded to the Panel with instruction to relist the company's securities on the SmallCap Market, effective upon the completion of Staff's review of the company's application. This process requires the company to: (1) file an application for new listing, (2) pay all applicable listing fees, and (3) evidence compliance with all requirements for initial listing on the SmallCap Market, except that the company must demonstrate a minimum bid price of $1 instead of $4. Furthermore, at the time of Staff's review of the application, there must be no adverse developments or public interest reasons justifying denial of listing.

Listing Council Decision 2003-3

- **Bid Price**
- **Market Value of Publicly Held Shares**

Rule 4450(b)(4): $3 minimum bid price requirement for continued listing on the National Market under Maintenance Standard 2.

Rule 4450(b)(3): $15,000,000 market value of publicly held shares requirement for continued listing on the National Market under Maintenance Standard 2.

Issue: At the time of the Panel's decision, the company's common share closing bid price was below $3, and its market value of publicly held shares was below $15,000,000. The company also did not meet the requirements for continued inclusion on the SmallCap Market.

Determination: The Panel's determination to delist the company's securities from The NASDAQ Stock Market was appropriate at the time of the decision. Based on events occurring after the Panel's decision, the Panel's decision was reversed. Under Rule 4330(e), a security that has been terminated from NASDAQ must meet the initial listing requirements before re-inclusion. Approximately two weeks after the Panel's decision, the company's stock price increased above $1. The company also met all of the initial listing requirements for the National Market, except for the $5 minimum bid price requirement, as set forth in Rule 4420, and the initial listing requirements for the SmallCap Market, except for the $4 minimum bid price requirement, as set forth in Rule 4310(c)(4). The company's closing bid price had been above $1 per share for approximately two months; therefore, the company would still have been within the 180-day bid price grace period afforded to SmallCap issuers, as set forth in Rule 4310(c)(8)(D). Accordingly, the Listing Council waived the $4 initial listing bid price requirement and instead required that the company meet the $1 continued listing bid price requirement on the SmallCap Market. The company was not provided with an exception to the $5 minimum bid price initial listing requirement on the National Market, because it was non-compliant for nine months with the $3 minimum bid price continued listing requirement.

The matter was remanded to the Panel with instruction to relist the company's securities on the SmallCap Market effective upon the completion of Staff's review of the company's application. This process requires the company to: (1) file an application for new listing, (2) pay all applicable listing fees, and (3) evidence compliance with all requirements for initial listing on the SmallCap Market, except that the company must demonstrate a minimum bid price of $1 instead of $4. Furthermore, at the time of Staff's review of the application, there must be no adverse developments or public interest reasons justifying denial of listing.

Listing Council Decision 2003-4

- **Shareholders' Equity**
- **Bid Price**

Rule 4310(c)(2): $2,500,000 shareholders' equity requirement, or its alternatives, for continued listing on the SmallCap Market.

Issue: The company no longer satisfied the shareholders' equity requirement. The company asserted that it would regain compliance after it received financing in connection with a transaction with a potential partner. The company expected to consummate the transaction within three months. The company also planned to raise financing through a placement agent.

Determination: The company was properly delisted for failure to comply with the shareholders' equity requirement. The company had been deficient for approximately eight months and had not provided sufficient evidence to indicate that its proposed transaction would occur in the near term. There was no evidence in the record, and the company had not filed any reports on Form 8-K or issued any press releases, announcing that it received a term sheet or entered into a definitive agreement with the potential partner. In addition, the company had not provided any evidence or publicly announced that it raised any financing through its placement agent.

* * *

Rule 4310(c)(4): $1 minimum bid price requirement for continued listing on the SmallCap Market.

Issue: The bid price of the company's common stock was below $1. The company believed its common stock price would increase after it received financing in connection with its proposed transaction. Even though the company had been non-compliant with the bid price requirement for one year, it indicated that it would only implement a reverse stock split if its plan did not improve its bid price.

Determination: The company was properly delisted for failure to comply with the minimum bid price requirement. The company had been deficient for approximately one year. Anticipated favorable market reaction is not a definitive plan to regain compliance with the minimum bid price requirement. Furthermore, the company had not filed a preliminary proxy statement to effect a reverse stock split.

Listing Council Decision 2003-5

- **Filing**

Rule 4310(c)(14): The issuer shall file with NASDAQ all reports and other documents required to be filed with the Securities and Exchange Commission ("SEC"). Annual reports filed must contain audited financial statements.

Issue: The company was deficient in filing its Form 10-Q for a period of five months as a result of accounting restatements related to inventory shortfall adjustments.

Determination: Based on events occurring after the Panel's decision, the Panel's decision was reversed. The company filed its delinquent Form 10-Q and completed its internal control investigation. The company made reasonable efforts to solve the inventory control issues and provided consistent and adequate disclosure to investors through press releases and SEC filings. Furthermore, the company instituted remedial measures to improve its internal controls and prevent future inventory problems by hiring more experienced management personnel and a new controller, installing a new accounting system and conducting physical inventory counts.

The company must make all of its public filings for the periods ending in the 12-month period from the date of the decision with the SEC in a timely manner, including any permitted extensions, pursuant to Rule 12b-25. If the company fails to timely file its public reports during this period, its securities will be immediately delisted from The NASDAQ Stock Market without a right to further hearings.

Listing Council Decision 2003-6

- **Filing**

Rule 4310(c)(14): The issuer shall file with NASDAQ all reports and other documents required to be filed with the Securities and Exchange Commission ("SEC"). Annual reports filed must contain audited financial statements.

Issue: The company failed to file its first and second quarter Forms 10-Q as a result of an investigation and accounting restatements. As a result of the restatements, the company's financial statements and audit report for the previous fiscal year could not be relied upon. At the time of the Listing Council's decision, the company had been out of compliance with the filing requirement for approximately five months and had still not made the necessary filings.

Determination: The company was properly delisted for failure to comply with the filing requirement. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. Investors in securities listed on NASDAQ are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934. In this case, however, investors did not have access to accurate financial information regarding the company for the previous fiscal year and the subsequent interim periods. Furthermore, in the absence of accurate and reliable financial statements, Staff was unable to determine if the company was in compliance with all of the NASDAQ continued listing requirements.

Listing Council Decision 2003-7

- **Shareholders' Equity**

Rules 4450(a)(3) and 4450(b)(1): $10,000,000 shareholders' equity, or its alternatives, $50,000,000 market value of listed securities or $50,000,000 total assets and $50,000,000 total revenue requirements, for continued listing on the National Market.

Issue: The company no longer satisfied the shareholders' equity requirement for continued inclusion on the National Market and was transferred to the SmallCap Market. The company asserted that it would be in compliance with the National Market shareholders' equity requirement after it completed a private placement, and it would be able to maintain compliance throughout 2003 according to its financial projections.

Determination: The company was properly transferred to the SmallCap Market for failure to comply with the shareholders' equity requirement on the National Market. Following the consummation of the private transaction, it appeared that the company's shareholders' equity was approximately $11,000,000. However, the company had been deficient with the shareholders' equity requirement for more than six months. Under Rule 4330(e), a security that has been terminated from NASDAQ must meet the initial listing requirements before re-inclusion. Because the Panel appropriately delisted the company's securities from the National Market, the initial listing requirements provide the correct standard for a review of the company's listing qualifications. The company, however, did not meet the National Market initial listing requirements.

Furthermore, even under the National Market continued listing requirements, it appeared that the company would be unable to maintain long term compliance with the minimum shareholders' equity compliance given its history of losses. Although the company projected shareholders' equity meeting the National Market continued listing requirements throughout 2003, the company did not provide sufficient information in its projections to predict an accurate rate of monthly income or loss. For example, the company did not provide detailed assumptions for its projections, such as nonrecurring costs or revenues. Based on its net losses for 2002, the company would soon fall below the $10,000,000 shareholders' equity requirement.

Listing Council Decision 2003-8

- **Public Interest**

Rules 4300 and 4330(a)(3): NASDAQ may exercise its discretion in applying additional or more stringent criteria for initial or continued inclusion or suspend or terminate the inclusion of an otherwise qualified security if NASDAQ deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest.

Issue: The company had not timely filed its Form 10-K because it was in the process of restating its prior financial statements. In connection with the restatement, the company was also performing an internal investigation. The Panel granted the company a one-month extension to file its Form 10-K and concluded "there appears to have been no intent to mislead or defraud the investing public."

Determination: There was insufficient record evidence for the Panel to reach a conclusion on the public interest issue, since the internal investigation was not yet complete. In the absence of the results of this investigation, the Panel's conclusion was premature. The Panel's decision was vacated to the extent it held that there appeared to have been no intent to mislead or defraud the investing public.

Listing Council Decision 2003-9

- **Shareholders' Equity**

Rule 4310(c)(2)(B): $2,500,000 shareholders' equity requirement, or its alternatives, for continued listing on the SmallCap Market.

Issue: The company no longer satisfied the shareholders' equity requirement. The company expected to receive funding, which it believed would have a material impact on the company's ability to complete manufacturing and shipment of additional product and result in additional profits.

Determination: The company was properly delisted for failure to comply with the shareholders' equity requirement. The company's assertion that additional funding would increase profits was not a definitive plan to evidence that the company can regain compliance with the shareholders' equity requirement. In addition, the company had a history of losses.

Listing Council Decision 2003-10

- **Shareholder Approval**

Rule 4350(i)(1)(A): issuers must obtain shareholder approval for an arrangement made pursuant to which stock may be acquired by officers and directors. Shareholder approval is not required if the amount of securities which may be issued under the arrangement does not exceed the lesser of 1% of the number of shares of common stock, 1% of the voting power outstanding or 25,000 shares.

Issue: The company violated Rule 4350(i)(1)(A) by issuing shares in private placements to Section 16 officers and directors at a discount to market price. The discount was approximately 1%, which amounted to $1,000. The Panel issued a decision requiring the Section 16 officers and directors, who had received a discount in the private placements, to pay the difference between what they had paid and the market price of the company's common stock on the date of issuance.

Determination: The company may either restructure the transaction such that the Section 16 officers and directors provide additional consideration to the company or rescind the violative transactions. Although the company has proposed to seek shareholder ratification of the violative transactions in connection with its annual meeting, shareholder ratification of a violative transaction is not an acceptable substitute for prior shareholder approval.

The Panel's decision was reversed to the extent it permitted the company to address the shareholder approval violation by requiring insiders to pay the market price on the date of issuance. This allows insiders to eliminate their investment risk by electing to opt out of the transaction if the market price subsequently decreases. The company should adjust the price to the greater of the market value as of the date of the binding agreement or the date NASDAQ first notified the company of the deficiency.

Listing Council Decision 2003-11

- **Shareholders' Equity**

Rules 4450(a)(3) and 4450(b)(1): $10,000,000 shareholders' equity, or its alternatives, $50,000,000 market value of listed securities or $50,000,000 total assets and $50,000,000 total revenue requirements, for continued listing on the National Market.

Issue: The company no longer satisfied the shareholders' equity requirement for continued inclusion on the National Market and was transferred to the SmallCap Market. The company stated it would attempt to restructure its preferred stock so that it would be treated as equity on the balance sheet under applicable accounting rules. It also intended to raise proceeds in a private equity offering and explore potential development partner fees. Furthermore, it had ceased its stock buy back program and was cutting down on its expenses to reduce its net losses.

Determination: The company was properly delisted from the National Market for failure to comply with the minimum shareholders' equity requirement. The company had been below $10,000,000 for more than nine months at the time of the Listing Council's determination. In addition, the company has not raised sufficient additional equity or provided any definitive evidence of its plan to increase its shareholders' equity. The company's shareholders' equity would also be negatively impacted as a result of its history of losses. The Panel properly determined that, although the company did not comply with all of the requirements for continued listing on the National Market, it did comply with all of the requirements for continued listing on the SmallCap Market

Listing Council Decision 2003-12

- **Filing**

Rule 4310(c)(14): The issuer shall file with NASDAQ all reports and other documents required to be filed with the Securities and Exchange Commission ("SEC"). Annual reports filed must contain audited financial statements.

Issue: After the company disclosed that it would delay filing its Form 10-K as a result of its audit committee's investigation into accounting improprieties, the Panel delisted the company's securities based on a filing deficiency. The company subsequently filed its Form 10-K and Form 10-Q, which were deficient for a period of approximately five and three months, respectively, as a result of accounting restatements related to revenue recognition adjustments.

Determination: The Panel's decision was reversed because the company made the required filings, received an unqualified independent auditors' opinion and was not deficient with any other NASDAQ requirement. However, there was insufficient record evidence to determine whether public interest concerns existed, particularly given the extent of the restatements and a formal investigation being conducted by the SEC. Therefore, the matter was remanded to the Panel with instructions to further remand to Staff for an investigation. Thereafter, the Panel was required to issue a decision making a determination as to whether public interest concerns existed. If the Panel determined that no public interest concerns existed and there were no other deficiencies, the Panel was instructed to promptly relist the company's securities.

Listing Council Decision 2003-13

- **Shareholders' Equity**

Rule 4310(c)(2)(B): $2,500,000 shareholders' equity requirement, or its alternatives, for continued listing on the SmallCap Market.

Issue: At the time of the Panel decision, the company did not meet the minimum shareholders' equity requirement or its alternatives and its plan to raise additional equity was not sufficiently definitive. The company planned to regain compliance by completing private placements, converting debt to equity and earning a fee upon entering into a license agreement. Following the Panel's delisting decision, the company's stock price increased, which caused the company to meet the $35 million minimum market value of listed securities continued listing requirement, an alternative to the shareholders' equity requirement.

Determination: The company had been deficient with the shareholders' equity requirement or its alternatives for more than eight months. Under Rule 4330(e), a security that has been terminated from NASDAQ must meet the initial listing requirements before re-inclusion. Because the Panel appropriately delisted the company's securities from the SmallCap Market, the initial listing requirements provide the correct standard for a review of the company's listing qualifications. The company, however, did not meet the National Market initial listing requirements.

Listing Council Decision 2003-14

- **Filing**
- **Audit Committee Composition**

Rule 4310(c)(14): The issuer shall file with NASDAQ all reports and other documents required to be filed with the Securities and Exchange Commission ("SEC"). Annual reports filed must contain audited financial statements.

Issue: After the company disclosed that it would delay filing its Form 10-K as a result of its audit committee's investigation into accounting improprieties, the Panel delisted the company's securities based on a filing deficiency. The company subsequently filed its Forms10-K and 10-Q, which were deficient for a period of approximately 4 and 2 ½ months, respectively, as a result of accounting restatements related to revenue recognition adjustments.

Determination: The Panel's decision was reversed because the company made the required filings and received an unqualified independent auditors' opinion. However, there was insufficient record evidence to determine whether public interest concerns existed, particularly given the extent of the restatements, an investigation being conducted by the SEC, and the result of an internal investigation, which concluded that the company had engaged in fraudulent accounting. Therefore, the matter was remanded to the Panel with instructions to further remand to Staff for an investigation. Thereafter, the Panel was required to issue a decision making a determination as to whether public interest concerns existed. If the Panel determined that no public interest concerns existed and there were no other deficiencies, the Panel was instructed to promptly relist the company's securities.

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Rule 4350(d)(2): An issuer must have an audit committee of at least three members, comprised solely of independent directors.

Issue: Two members of the audit committee served as interim presidents for approximately 45 days.

Determination: There was insufficient record evidence to determine whether the audit committee members were independent; therefore, the matter was remanded to the Panel. The company must provide the Panel with information as to whether such members received compensation as defined in the Rule 10A-3(b)(1)(ii)(A) of the Securities Exchange Act of 1934 and whether such members otherwise comply with NASDAQ Marketplace Rule 4350(d)(2). If the audit committee members do not meet the criteria pursuant to the aforementioned rules, the company must submit a plan to the Panel to rectify the audit committee deficiency. If the Panel determines that the company's only deficiency is the audit committee requirement, the Panel must provide the company an opportunity to cure the deficiency.

Listing Council Decision 2003-15

- **Filing**
- **Bid Price**
- **Proxy Solicitation**
- **Market Value of Publicly Held Shares**

Rule 4310(c)(14): The issuer shall file with NASDAQ all reports and other documents required to be filed with the Securities and Exchange Commission ("SEC"). Annual reports filed must contain audited financial statements.

Issue: The company had not filed its Form 10-K or the past two Forms 10-Q and did not provide an estimated date for filing these SEC reports.

Determination: The company was properly delisted for failure to comply with the filing requirement. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. Investors in securities listed on NASDAQ are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934. In this case, however, investors did not have access to accurate financial information regarding the company for more than one year. Furthermore, in the absence of accurate and reliable financial statements, Staff was unable to determine if the company was in compliance with all of the NASDAQ continued listing requirements.

* * *

Rule 4310(c)(4): $1 minimum bid price requirement for continued listing on the SmallCap Market.

Issue: The bid price of the company's common stock was below $1 for approximately 21 months. The company planned to effect a 1-for-4 reverse stock split after its annual meeting.

Determination: The company was properly delisted for failure to comply with the minimum bid price requirement. Even if the company effected its planned 1-for-4 reverse stock split, its share price would still be below $1.

* * *

Rule 4350(g): Issuers are required to solicit proxies and provide proxy statements for all meetings of shareholders.

Issue: Although the company recently filed a definitive proxy statement with the SEC, it previously had not filed a proxy statement, or solicited proxies, since its securities were listed on NASDAQ in 2000.

Determination: The company was properly delisted for failure to comply with the proxy solicitation requirements.

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Rule 4310(c)(7): $1,000,000 market value of publicly held shares requirement for continued listing.

Issue: Based on information in the company's information statement and its most recent stock price, its market value of publicly held shares was less than $1,000,000. The company believed its stock was undervalued.

Determination: The company was properly delisted for failure to comply with the market value of publicly held shares requirement.

Listing Council Decision 2003-16

- **Shareholders' Equity**

Rule 4310(c)(2)(B): $2,500,000 shareholders' equity requirement, or its alternatives, for continued listing on the SmallCap Market.

Issue: The company did not meet the minimum shareholders' equity requirement or its alternatives. The company planned to regain compliance by restructuring agreements with third parties to minimize the treatment of those agreements as long-term liabilities; improving its earnings through accelerated expense reductions and revenue generation from a price increase; and pursuing a settlement related to pending litigation.

Determination: The company was properly delisted for failure to comply with the shareholders' equity requirement. The company did not provide any definitive documentation or timetable to indicate when the company expected to achieve its plan. Furthermore, the company had a history of losses. In analyzing whether a company will be able to regain and sustain compliance with the shareholders' equity requirement over the long term, the Listing Council reviews the company's recent losses and how such losses would affect shareholders' equity over the next 12-month period.

Listing Council Decision 2003-17

- **Shareholders' Equity**

Rule 4310(c)(2)(B): $2,500,000 shareholders' equity requirement, or its alternatives, for continued listing on the SmallCap Market.

Issue: At the time of the Panel decision, the company did not meet the minimum shareholders' equity requirement or its alternatives, and its plan to raise additional equity was not sufficiently definitive. The company requested that the Panel include its contract and tax assets, which were not fully reflected on the company's balance sheet under generally accepted accounting principles, in the calculation of shareholders' equity. In the alternative, the company was considering a plan to effect a quasi-reorganization, which would allow a fresh start restructuring of its shareholders' equity.

Determination: The company was properly delisted for failure to comply with the shareholders' equity requirement. The Panel's unwillingness to consider the inclusion of assets not captured on the company's balance sheet was appropriate. Further, the company did not provide documentation to evidence its ability to restructure its shareholders' equity in the near term.

Listing Council Decision 2003-18

- **Shareholders' Equity**

Rule 4310(c)(2)(B): $2,500,000 shareholders' equity requirement, or its alternatives, for continued listing on the SmallCap Market.

Issue: The company did not meet the minimum shareholders' equity requirement or its alternatives. The company planned to regain compliance by acquiring another company and completing a private placement.

Determination: The company was properly delisted for failure to comply with the shareholders' equity requirement. The company did not provide any definitive documentation to evidence compliance with the shareholders' equity requirement. Furthermore, even if the company completed their plan, it had a history of losses. In analyzing whether a company will be able to regain and sustain compliance with the shareholders' equity requirement over the long term, the Listing Council reviews the company's recent losses and how such losses would affect shareholders' equity over the next 12-month period. As such, the company did not demonstrate sustainable compliance.

Listing Council Decision 2003-19

- **Filing**

Rule 4310(c)(14): The issuer shall file with NASDAQ all reports and other documents required to be filed with the Securities and Exchange Commission ("SEC"). Annual reports filed must contain audited financial statements.

Issue: After the company disclosed that it had replaced its auditor, would need to restate its prior period financial statements, and would delay filing its Form 10-K as a result of its audit committee's investigation into accounting improprieties, the Panel delisted the company's securities based on a filing deficiency. The company subsequently filed amended prior period financial statements and its Forms10-K and 10-Q, which were deficient for a period of approximately 2 and 1 ½ months, respectively, as a result of accounting restatements related to an overstatement of the company's revenue and net income.

Determination: The Panel's decision was reversed because the company made the required filings and received an unqualified independent auditors' opinion. However, there was insufficient record evidence to determine whether public interest concerns existed, particularly given the extent of the restatements, an investigation being conducted by the SEC, and the result of an internal investigation, which concluded that the company had engaged in fraudulent accounting. Therefore, the matter was remanded to the Panel with instructions to further remand to Staff for an investigation. Thereafter, the Panel was required to issue a decision making a determination as to whether public interest concerns existed. If the Panel determined that no public interest concerns existed and there were no other deficiencies, the Panel was instructed to promptly relist the company's securities.

Listing Council Decision 2003-20

- **Filing**

Rule 4310(c)(14): The issuer shall file with NASDAQ all reports and other documents required to be filed with the Securities and Exchange Commission ("SEC"). Annual reports filed must contain audited financial statements.

Issue: The company failed to file its Form 10-K for its fiscal year end or its first and second quarter Forms 10-Q because it was in the process of restating its prior financial statements. In connection with the restatement, the company was also performing an internal investigation. As a result of the restatements, the company's financial statements and audit report for the previous fiscal year could not be relied upon**.** At the time of the Listing Council's decision, the company had been out of compliance with the filing requirement for six months and had still not made the necessary filings.

Determination: The company was properly delisted for failure to comply with the filing requirement. The Listing Council takes seriously the requirement to file accurate and reliable financial statements and the concomitant purpose to provide investors with current information regarding the company. Investors in securities listed on NASDAQ are entitled to assume that issuers of those securities will promptly and accurately comply with their reporting obligations under the Securities Exchange Act of 1934. In this case, however, investors did not have access to accurate financial information regarding the company for the previous fiscal year and the subsequent interim periods. Furthermore, in the absence of accurate and reliable financial statements, Staff was unable to determine if the company was in compliance with all of the NASDAQ continued listing requirements.

With respect to the company's request to be allowed to relist under continued listing criteria after it makes its periodic filings and restatements, the Listing Council notes that under Rule 4330(e), a security that has been terminated from NASDAQ must meet the initial listing requirements before re-inclusion. Because the Panel appropriately delisted the company's securities, the initial listing requirements are the correct standard for a review of the company's listing qualifications at such time the company seeks to be relisted.