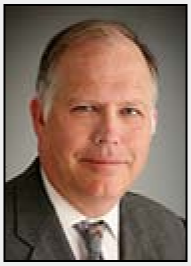
[Read this online.](#)

Allen Matkins — *Corporate and Securities*



Keith Paul Bishop
Partner
Orange County
(949) 851-5428
kbishop@allenmatkins.com

Joe M. Davidson
Partner
Del Mar Heights
(619) 235-1539
jdavidson@allenmatkins.com

NASDAQ Stock Market LLC Adopts Ten-Minute Warning Rule

This alert contains information that affects NASDAQ listed companies.

Effective December 7, 2009, NASDAQ listed companies are ***required*** to notify NASDAQ's MarketWatch department of specified public disclosures at least ten minutes before public release of those disclosures. Before that date, NASDAQ had only ***recommended*** that companies provide at least ten minutes' notice to NASDAQ before release.

NASDAQ's listing rules require that companies make prompt disclosure to the public of any material information that would reasonably be expected to affect the value of their securities or influence investors' decisions. NASDAQ has specifically required notice to its MarketWatch department when any of the following disclosures are made:

- Financial-related disclosures, including quarterly or yearly earnings, earnings restatements, pre-announcements or "guidance."
- Corporate reorganizations and acquisitions, including mergers, tender offers, asset transactions and bankruptcies or receiverships.
- New products or discoveries, or developments regarding customers or suppliers (*e.g*., significant developments in clinical or customer trials, and receipt or cancellation of a material contract or order).
- Senior management changes of a material nature or a change in control.
- Resignation or termination of independent auditors, or withdrawal of a previously issued audit report.
- Events regarding the company's securities — *e.g*., defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits or changes in dividends, changes to the rights of security holders, or public or private sales of additional securities.
- Significant legal or regulatory developments.
- Any event requiring the filing of a Form 8-K.

Previously, NASDAQ's rule had not imposed a specific time frame for this notice. Now, companies must provide at least ten minutes' notice with respect to any of the disclosures listed above. This ten-minute requirement is consistent with the New York Stock Exchange's existing notice requirement.

NASDAQ requires that except in emergency situations, companies provide notice through its electronic disclosure submission system, which is available at www.nasdaq.net. Examples of emergency situations include: no computer or internet access; technical problems with either the company's or NASDAQ's system or incompatibility between those systems; and a material development for which no draft disclosure document exists. In emergency situations, a company may provide notice by telephone or facsimile.

Under unusual circumstances, companies may not be required to make public disclosure of material events. For example, disclosure may not be required when it is possible to maintain confidentiality of those events and immediate public disclosure would prejudice the ability of the company to pursue its legitimate corporate objectives. Companies remain obligated under NASDAQ's listing rules, however, to disclose this information to NASDAQ upon request.

The purpose of the notice requirement is to provide NASDAQ's MarketWatch department with an opportunity to assess whether it is appropriate to implement a trading halt. Trading halts are used to allow full dissemination of the news by the public and to maintain an orderly trading market.

NASDAQ continues to require that public disclosure of material information be made in a Regulation FD compliant method. As adopted by the Securities and Exchange Commission, Regulation FD provides that when a company discloses material nonpublic information to certain individuals or entities—generally, securities market professionals, such as stock analysts, or holders of the issuer's securities who may well trade on the basis of the information—the issuer must make public disclosure of that information. NASDAQ has also modified the interpretive material to its rules relating to compliance with Regulation FD. That interpretive material had stated that website posting alone ***does not*** by itself satisfy the public disclosure requirements of Regulation FD. This material has been changed to provide website posting ***may not*** by itself be considered a sufficient method of public disclosure. The effect of this change is that NASDAQ now recognizes that in some cases website posting may satisfy Regulation FD.

If a NASDAQ listed company repeatedly fails to notify NASDAQ at least ten minutes before the distribution of material news, or repeatedly fails to use the electronic disclosure submission system when NASDAQ finds no emergency situation existed, NASDAQ may issue a Public Reprimand Letter or, in extreme cases, a Staff Delisting Determination. In determining whether to issue a Public Reprimand Letter, NASDAQ will consider whether the company has demonstrated a pattern of failures, whether the company has been contacted concerning previous violations, and whether the company has taken steps to assure that future violations will not occur.

NASDAQ listed companies should review their disclosure procedures to ensure that they take into account the new mandatory ten-minute notice requirement. These companies may also want to consider whether website posting of material information will in light of Securities and Exchange Commission guidance constitute adequate public disclosure under Regulation FD.

If you are interested in learning more, please contact us.

Allen Matkins Corporate and Securities Attorneys

Keith P. Bishop
Joe M. Davidson
Matthew J. Ertman
Debra Dison Hall
Brian C. Leck
Clark H. Libenson
Daniel G. McIntosh
Roger S. Mertz
Geoffrey E. Perusse
Roberta V. Romberg
D. Stanley Rowland
Philip C. Schroeder
Nick M. Unkovic

Orange County
(949) 553-1313

San Diego
(619) 233-1155

Century City
(310) 788-2400

Walnut Creek
(925) 943-5551

Los Angeles
(213) 622-5555

San Francisco
(415) 837-1515

Del Mar Heights
(858) 481-5055