

Akerman Practice Update

CORPORATE

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Changes To Nasdaq Marketplace Rule 5250 Become Operative

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On December 7, 2009, changes to Nasdaq Marketplace Rule 5250 became operative. The rule governs a Nasdaq-listed company's obligation to make prompt public disclosure of material information that would reasonably be expected to affect the value of its securities or influence investors' decisions.

As a result of the changes to Rule 5250:

- Nasdaq-listed companies are now *required* to provide Nasdaq with at least ten minutes prior notification when releasing material information to the public. Previously, Nasdaq only *recommended* that companies provide Nasdaq with at least ten minutes prior notification.
- Prior notice to Nasdaq's MarketWatch Department *must* be made through the electronic disclosure submission system available at www.nasdaq.net, except in emergency situations. Prior to the rule changes, Rule 5250 provided that prior notice *should* be provided in that manner.
- Language in IM-5250-1 (interpretive material regarding Rule 5250) that, as previously written, may have been inconsistent with an interpretive release recently published by the Securities and Exchange Commission providing guidance on the use of company websites, was modified to conform to the SEC's guidance. Under the SEC's guidance, the posting of information on a company website *could* be considered a sufficient method of public disclosure under Regulation FD. The language previously contained in IM-5250-1 indicated that a website posting alone *does not* by itself satisfy the public disclosure requirements of Regulation FD. This language was modified to instead provide that a website posting alone *may not* by itself satisfy those requirements. In

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general, disclosure of material information to the public may be made through any Regulation FD compliant method (or combination of methods).

Nasdaq believes that mandating pre-notification ten minutes before public release of news is appropriate to enable Nasdaq to consider whether trading in the security should be temporarily halted. If a Nasdaq-listed company repeatedly fails to either notify Nasdaq at least ten minutes prior to 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.

David M. Doney is a shareholder in Akerman's Tampa office whose practice is concentrated in the corporate and securities law areas and principally involves mergers and acquisitions, public and private securities financings, corporate governance, Securities Exchange Act reporting and compliance matters, and other business transactions.

The summary set forth herein is intended to be general in nature and does not constitute legal advice with respect to any particular situation. No legal or business decision should be based solely on its contents. If you would like further information or help in assessing how the proposed rules might affect your company, please contact your principal lawyer at the firm or one of the Akerman shareholders listed below:

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