

Robert Greifeld
Chief Executive Officer



October 26, 2012

Mr. Brian Ross
Chief Investigative Correspondent
ABC News
47 West 66th Street
New York, NY 10023-6298

Dear Mr. Ross,

In response to your letter dated October 16, 2012, I am proud to describe NASDAQ's role in the regulatory effort to address instances of fraud and financial misstatements that occurred with certain Chinese-based companies. Since these issues first surfaced in late 2010, we immediately took a number of decisive and fair steps to ensure that investors and the markets are protected, and offenders are removed from, or denied initial listing on, NASDAQ.

For example:

- We were the first exchange to propose more stringent listing criteria for companies that sought to list through "reverse merger" transactions, which included many Chinese companies. The other exchanges followed our lead and adopted substantially similar rules.
- We were the first exchange to retain an outside investigative firm to assist our listings program. Again, other exchanges – both here and abroad – followed our lead.
- We were the first exchange to apply more stringent requirements than set forth in our SEC-approved listing rules. For instance, in appropriate instances, we required companies to reconcile their SEC reports with tax filings made in their home countries, verify their cash balances and/or confirm customer relationships. As a direct result of these efforts, we uncovered several previously undetected frauds and took immediate action to delist these companies.
- We were, and continue to be, the only exchange to have a dedicated internal investigations team, staffed with former SEC enforcement attorneys, a Certified Public Accountant, a Certified Fraud Examiner, and a Chartered Financial Analyst.

In the last two years, the efforts of our team has directly led to the delisting of over 40 Chinese companies where there was evidence of fraud, financial misstatements or other failures to satisfy our listing rules. Also as a direct result of our efforts, another 40 Chinese-based companies withdrew their listing applications when we raised questions about their qualifications to list. The results speak for themselves: we have taken prompt and appropriate action to protect investors and the market.

As an initial matter, it is important to understand that all companies that seek to list on NASDAQ must meet our stringent initial financial listing requirements and a separate set of corporate governance requirements, including requirements related to independent boards and audit committees. Once listed, companies must continue to comply with ongoing financial and corporate governance requirements. We have a staff of over 30 professionals whose responsibility is to ensure that our listed companies satisfy these rules and to take prompt action, in accordance with our rules, when they do not. This staff has limited discretion to grant any exceptions from the listing requirements, and the exceptions they can allow must be short-term and the company's non-compliance is disclosed on our public website. All of NASDAQ's listing rules are subject to approval by the SEC, which also conducts periodic oversight examinations of our listings program to ensure that we are applying and enforcing our rules in an appropriate manner.

A company's compliance with our listing criteria is determined by the company's most recent financial statements and other information filed with the SEC. Corporate financial statements must be prepared in accordance with U.S. Generally Accepted Accounting Principles or International Financial Reporting Standards, as required by the SEC's rules.

The company must also have an audit committee comprised of independent directors, which is charged with overseeing the accounting and financial reporting process which results in these financial statements. These financial statements must also be audited by an independent public accountant that is registered with the Public Company Accounting Oversight Board (PCAOB). Based on its independent examination of the evidence supporting the amounts and disclosures in the financial statements, the auditor expresses an opinion on whether the financial statements fairly present the company's financial position. In doing our job, we rely on this regulatory blueprint, where independent directors oversee the financial reporting process, the company's officers certify, under criminal penalty, as to the accuracy of the financial statements, auditors review and express an opinion on those financial statements as an independent third-party, and the PCAOB is responsible for reviewing the qualifications of the auditor. In the case of IPOs, the underwriter also plays a significant role in vetting the company.

This approach has resulted in a successful and rigorous listings program for many years that has contributed significantly to the capital formation process and the financial security of investors. Sometimes, however, there are bad actors who are willing to deceive their investors, boards and auditors, among others. When evidence of problems with some companies began to surface through auditor and director resignations, tips, and discussions on Internet chat rooms, as well as our own due diligence, we realized that we would have to look behind the financial statements that had been reviewed by these other gatekeepers. The problems that began to emerge were not unique to Chinese companies listed on NASDAQ, or even those listed in the U.S., but affected companies listed on exchanges throughout the world. However, in an effort that goes back over 18 months, NASDAQ has been a leader in implementing a strong regulatory response, designed to protect investors in NASDAQ-listed companies.

For example, in April 2011, NASDAQ was the first U.S. exchange to proactively propose a rule to apply more stringent listing requirements to companies that go public through so-called "reverse merger" transactions with public shell companies. Under U.S. law, we were not able to implement the rule until the SEC approved it, but now that it is in effect, there is evidence the rule is working.

Under the rule, a company that goes public through the reverse merger process is not eligible to submit a listing application to NASDAQ until it has traded for at least one year after the combined entity submits audited financial statements to the SEC. This seasoning requirement allows more time to view trading patterns and uncover potentially manipulative trading intended to make it appear that the company satisfies our listing criteria. The rule also promotes the broadening of shareholder bases that could lead to greater liquidity.

As another pre-condition to applying to list, the company's common stock must have a closing price of \$4 or more for a sustained period of time, not less than 30 of the 60 trading days immediately preceding the filing of the application. This discourages schemes to manipulate prices higher to satisfy our initial listing price requirement.

Lastly, reverse merger companies must timely file with the SEC all required financial reports for the prior year, including an annual report with audited financial information for a full year commencing after the reverse merger, before they can be approved for listing. Requiring additional SEC filings as the merged company tends to improve the reliability of these companies' reported financial results, since they will be subject to oversight and review by the merged company's audit committee and auditors.

NASDAQ also went beyond our listing standards and took additional measures. For example, in appropriate situations, we required companies to have an independent third party personally visit the companies' banks and verify their cash balances. This uncovered previously undetected fraud and resulted in the delisting of several companies.

NASDAQ also employed an outside firm to assist in our investigations, helping to overcome unique barriers presented by the challenges of various languages and local customs. This firm obtained filings made with Chinese regulators, to allow us to compare the financial information reported in those filings with the information filed with the SEC. The firm also conducted site visits so that it could reconcile the activity actually observed at companies' locations with the activity reported in their SEC filings. NASDAQ also obtained customer contacts from companies, and asked the investigative firm to contact these customers to confirm their level of business with the company. Each of these actions resulted in our discovering discrepancies, which led to the denial of listing or delisting of companies.

NASDAQ recently provided these and other examples during a more than one hour-long meeting in our Rockville offices with ABC producer Matthew Mosk and researcher/intern Stuart Johnson. We have also communicated with Mr. Mosk by phone and email on numerous occasions over the past several weeks. And we are more than willing to continue our dialog with ABC by providing written on-the-record responses to any specific questions you may have on this topic.



Finally, notwithstanding the fraud uncovered in certain Chinese companies, it is important to note that we do not, and you should not, paint all companies with the same brush. There are many successful companies from that region that are listed on NASDAQ, or are seeking to list, that have complied fully with our requirements and those of the U.S. securities laws. We are committed to being a long-term partner with these hard-working, honest companies.

Thank you for your attention to this very important issue.

Sincerely,

A handwritten signature in dark ink, appearing to read "Paul Hefley". The signature is written in a cursive, flowing style.