



NASDAQ[®]

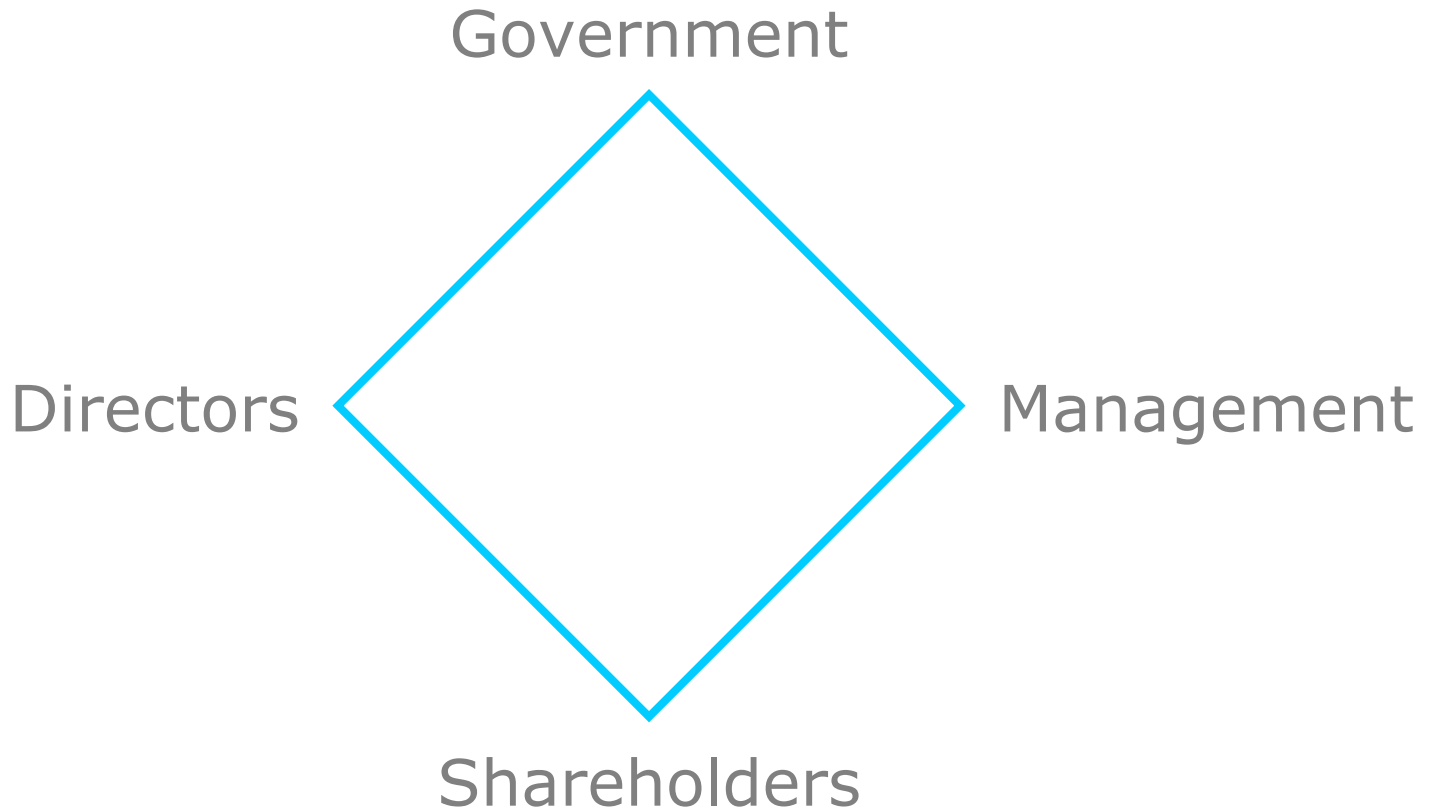
The best market for companies.
The best market for shareholders.

2004

- The year when rules become reality
- Boards will put a premium on:
 - no surprises
 - clear priorities/focus
 - efficiency in time and expenditures
- More companies will chose not to be public companies

Restoring Investor Trust

- Impact of Sarbanes-Oxley
- Impact of Enhanced Exchange Listing Standards
- Shifting the Balance of Power



Corporate Governance Reform: Specific Goals

- **Empower shareholders**
- **Empower independent directors**
- **Empower audit committees**
- **Enhance disclosure and transparency**

Key Considerations to Help Restore Investor Confidence

- Adopt significant listing standards, not just “best practices”
- Standards should be clear and objective
 - Plainly written, easy to understand rules are better for both investors and issuers than vague, subjective standards.
- One size does not fit all
 - NASDAQ companies and the NASDAQ market have unique characteristics that listing standards should reflect (e.g., diversity in size and age of companies).
 - Need to provide companies flexibility to structure board oversight of management (alternative compliance methods), while preserving board accountability for key decisions.
- Do no harm – avoid “the law of unintended consequences”

Flexibility When It Makes Sense

- One size does NOT fit all.
- Smaller companies often have smaller boards.
 - The “seven director” dilemma
- Alternative compliance mechanism for compensation and nominations committees.
- “Exceptional and limited circumstances” exception.

Less Prescriptive When It Makes Sense

- No corporate governance guidelines.
- No charter for the compensation committee.
- Internal audit not mandated.
- Only audit committee empowered to retain legal and other experts.

NASDAQ and NYSE Side-by-Side

Commonalities between NASDAQ and NYSE

- **Shareholder approval of equity compensation**
- **Expanded role of independent directors**
- **Strengthened audit committees**
- **Controlled company exception**
- **Large shareholders as independent directors**
- **Implementation Schedule**
- **Independence cooling off period – 3 years**

NASDAQ approach:

- **Offers greater flexibility, especially to smaller companies**
- **Strive to be less prescriptive when possible**

Heightened NASDAQ Requirements

- **Audit committee approval of related party transactions, as defined by SEC rules.**
- **Compensation Committee approval of all Section 16 Officer compensation (NASDAQ) vs. CEO only (NYSE).**
- **Heightened disclosure requirements for non-U.S. issuers.**
- **NASDAQ violations enforced through delistings only vs. NYSE letter of reprimand.**

<p style="text-align: center;">Recent NASDAQ Corporate Governance Rules</p>	<p style="text-align: center;">Recent NYSE Corporate Governance Rules</p>
<p>Board comprised of a majority of independent directors.</p> <p><u>Independent directors</u> must meet in executive sessions, which are expected to occur at least twice per year.</p>	<p>Board comprised of a majority of independent directors.</p> <p><u>Non-management directors</u> (who may not be independent) must meet in executive session. Name of the presiding director or manner of choosing such person must be disclosed. NYSE suggests, but does not require, that independent directors also meet in executive session at least once per year.</p>
<p>The compensation of <u>all Section 16 officers</u> must be approved either by an independent compensation committee, <u>or</u> by the independent directors in executive session. CEO may be present for discussion of other officers' compensation.</p> <p>Under exceptional and limited circumstances, certain non-independent directors may serve on an "independent" compensation committee for a two-year term (officers, employees and their family members are not eligible for service under this exception).</p> <p>No charter required for compensation committee.</p>	<p>Compensation committee comprised solely of independent directors must approve <u>CEO</u> compensation.</p> <p>No comparable exception for compensation committees is available.</p> <p>Companies are required to adopt a written charter for compensation committee.</p>

<p>NASDAQ The nomination of all directors must be approved either by a majority of the independent directors, <u>or</u> by a committee of independent directors.</p> <p>Under exceptional and limited circumstances, certain non-independent directors may serve on an "independent" nominations committee for a two-year term (officers, employees and their family members are not eligible for service under this exception).</p> <p>Companies are required to adopt a charter or board resolution addressing the nominations process.</p>	<p>NYSE Nominating/corporate governance committee comprised <u>solely</u> of independent directors must select director nominees and recommend a set of corporate governance principles.</p> <p>No comparable exception for nominating/corporate governance committees is available. Companies are required to adopt a written charter for the nominating/corporate governance committee.</p>
<p>Audit committee or other independent committee must <u>review and approve</u> all related party transactions.</p>	<p>Requires issuers only to review (not approve) related party transactions on an ongoing basis. The method of such review is left to the discretion of the issuer.</p>
<p>No requirement for an internal audit function.</p>	<p>Requires issuers to have an internal audit function.</p>

<p>NASDAQ</p> <p>Rule lists circumstances that automatically will be considered to impair independence, including direct receipt of more than <u>\$60,000 in payments</u> during the current or any of the last 3 <u>fiscal</u> years and indirect payments in excess of the greater of <u>5% of the recipient's revenues</u> or <u>\$200,000</u> during the current or any of the last 3 fiscal years. In addition, the rule precludes from serving as an independent director: employees of the issuer; family members of executive officers of the issuer; partners and certain employees of the issuer's auditor, and their family members (family members of non-partner employees who are not working on the audit may be independent); and anyone serving on an interlocking compensation committee with an executive officer of the issuer. The Board can also find another relationship that may impair independence.</p>	<p>NYSE</p> <p>Rule lists circumstances that automatically will be considered to impair independence, including direct receipt of more than <u>\$100,000 in compensation</u> during the last 3 <u>calendar</u> years and indirect payments in excess of the greater of <u>2% of the other company's revenues</u> or <u>\$1,000,000</u> during the current or any of the last 3 fiscal years. In addition, the rule precludes from serving as an independent director: employees of the issuer; family members of executive officers of the issuer; certain persons affiliated with the issuer's auditor, and their family members; and anyone serving on an interlocking compensation committee with an executive officer of the issuer. The Board can also find another relationship that may impair independence.</p>
<p>Three-year cooling-off period for certain relationships before a director can be considered independent. Generally, such periods are already in place.</p>	<p>Three-year cooling-off period for certain relationships before a director can be considered independent. These periods will be <u>phased-in</u> over the next year.</p>
<p>Must adopt a code of conduct, which must be <u>publicly available</u>.</p> <p>Waivers to code of conduct for directors and officers can only be made by board and must be promptly disclosed in SEC filings.</p>	<p>Must adopt code of conduct and disclose on <u>website</u>.</p> <p>Waivers to code for directors and officers can only be made by the board and must be disclosed on website.</p>
<p>No requirement for corporate governance guidelines.</p>	<p>Requires adoption and disclosure on website of company specific corporate governance guidelines.</p>

<p>NASDAQ</p> <p>Shareholders must approve all stock option plans and any material amendments to them.</p>	<p>NYSE</p> <p>Shareholders must approve all stock option plans and any material amendments to them. Brokers prohibited from voting customers' shares without express instructions.</p>
<p>Foreign issuers must disclose in SEC filings <u>any</u> exemptions from listing standards for US issuers and the alternative measures taken. Effective July 31, 2005, exemptions limited to foreign private issuers.</p>	<p>Foreign private issuers must disclose in SEC filings or on company's website <u>significant</u> ways in which they do not conform to listing standards for US companies.</p>
<p>Company must notify NASDAQ of any non-compliance with corporate governance requirements.</p>	<p>CEO must promptly notify NYSE of any material non-compliance with corporate governance requirements and must annually certify compliance with listing standards.</p>
<p>Violations enforced through delisting proceedings.</p>	<p>Public reprimand letter is first sanction for violations of listing sanctions; delisting reserved for repeated or flagrant violations.</p>

Enforcement of Listing Standards at NASDAQ

- Importance of disclosures/role of technology at NASDAQ in surveillance
- Enhanced transparency in application of standards
- Focus on “looking around the corner”
- Independence of listing standard enforcement process
- Five levels of independent review of delisting decisions

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US Market Open NASDAQ 2134.44 **-0.02** **-0.28%** | DJIA 10531.4 **-69.11** **-0.65%** | S&P 1137.17 **-2.66** **-0.23%**

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Frequently Asked Questions

Listing Qualifications

The mission of Listing Qualifications is to promote the integrity and the reputation of The NASDAQ Stock Market through the consistent and fair application of the initial and continued listing standards.

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 - [Related Party Transactions](#)
 - [Shareholder Approval - Acquisitions](#)
 - [Shareholder Approval - Alternative Outcomes & Defective Share Caps](#)
 - [Voting Rights](#)
 - [Recent Rule Changes](#)
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GENERAL QUESTIONS

- [Can you assist me with interpreting a SEC rule, policy or regulation?](#)
- [What does the fifth character in a symbol mean?](#)

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US Market Open

NASDAQ 2130.99 -9.47 ▼ -0.44% | DJIA 10526.66 -73.85 ▼ -0.7% | S&P 1137.56 -2.27 ▼ -0.2%

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Appellate Decisions of The NASDAQ Listing and Hearing Review Council

The procedures for the review of NASDAQ listing determinations are set forth in the Rule 4800 series. As described therein, a company may appeal a decision by the Listing Qualifications Panel to the NASDAQ Listing and Hearing Review Council ("the Listing Council"), or the Listing Council may on its own volition call the decision for review. The NASD Board may also call the Listing Council's decision for review. If the NASD Board declines to review the Listing Council decision, the Listing Council decision is the final action of NASDAQ; however, the company may appeal the decision to the Securities and Exchange Commission.

The Listing Council is a committee appointed by the NASDAQ Board of Directors, pursuant to Article V of the NASDAQ by-laws. In addition to reviewing decisions of the Panel, the Listing Council's responsibilities include making recommendations to the Board on policy and rule changes relating to company listings.

A summary of final Listing Council decisions, beginning with decisions dated July 2002, are provided below. The cases are organized by NASDAQ rules. All Listing Council decisions are based on the facts and circumstances arising in those cases and NASDAQ's rules and policies in effect on the date of the decision.

Rule Description

- [Annual meeting and proxy solicitation](#)
- [Bankruptcy](#)
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- [Fees](#)
- [Filing](#)
- [Independent Director and Audit Committee Composition](#)
- [Market value of publicly held shares](#)
- [Proxy solicitation](#)
- [Public Interest](#)
- [Publicly held shares](#)
- [Related parties transactions](#)
- [Reverse Merger](#)
- [Shareholder Approval](#)
- [Shareholders' equity](#)
- [Voting rights](#)

How NASDAQ Governs Itself

- We “eat our own cooking.”
- Public company
- Separate Chairman and CEO
- Regulator and market are separate

Dual Listing - Changing the Marketplace

IT'S NOT EVERY DAY
THAT A COMPANY
CHANGES THE ENTIRE
MARKETPLACE.

TODAY, SIX WILL,
BY DUAL LISTING
ON NASDAQ.



Today marks a significant day for the future of investing. Six companies - Apache, Cadence, Charles Schwab, Countrywide Financial, HP and Walgreens - will dual list on NASDAQ, providing their investors with more choices and reinforcing their position as leaders. Learn more about the way these companies are changing the marketplace, visit www.nasdaq.com/dual-list.



On Monday, January 12, 2004, six companies became the first to announce dual listing on NASDAQ:

- Apache Corporation (NYSE: APA)
- Cadence Design Systems (NYSE: CDN)
- Charles Schwab Corporation (NYSE: SCH)
- Countrywide Financial (NYSE: CFC)
- Hewlett-Packard (NYSE: HPQ)
- Walgreens (NYSE: WAG)

www.NASDAQ.com/dual-list

Benefits of Dual Listing

- Statement of Calpers, January 14, 2004:

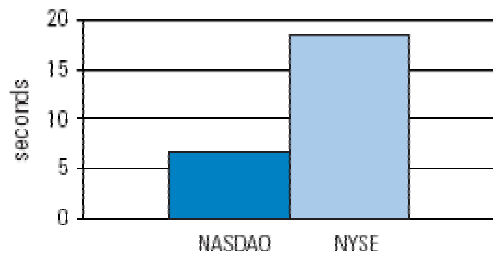
“As one of the nation’s largest investors, I want to commend these six companies and the NASDAQ for their decision to list these stocks on the NASDAQ and the NYSE. This is an excellent market response to the debate over the specialist system versus automated system. I believe investors will benefit from this competition by seeing improved liquidity, better execution, and greater transparency. I would encourage other CEOs and their Boards to examine the option of dual listing on both exchanges. It is our hope that the regulatory authorities will further improve the efficiency of the markets by eliminating the trade-through rule.”

Sean Harrigan, President of the California Public Employees’ Retirement System

Impact of Changes on Market Quality

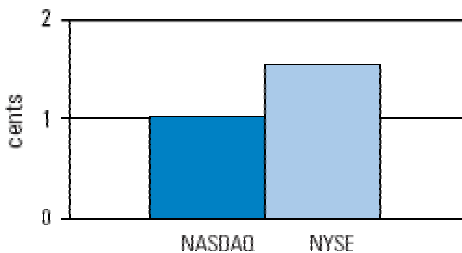
NASDAQ-listed S&P 500 stocks execute faster, with lower transaction costs and better pricing than NYSE comparables.

Faster Trades



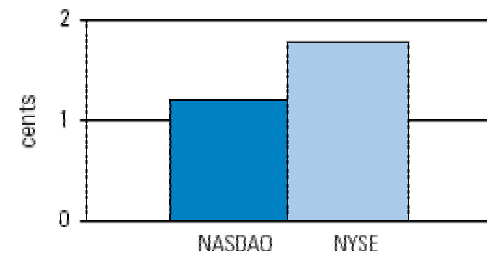
- NASDAQ executes in an average of 6.7 seconds
- NASDAQ is 2.8 times faster than the NYSE

Lower Costs



- NASDAQ is 32% better on average than the NYSE

Tighter Spreads



- NASDAQ is 34% better than the NYSE

NASDAQ Listing Qualifications Department

- **NASDAQ has a legal and compliance website that provides NASDAQ rules and interpretations:**
 - www.nasdaq.com/about/legalcompliance.stm
- **For general questions, please call our main number:**
 - **Listing Qualifications: 877-53NASDQ.**



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The best market for shareholders.