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NASDAQ's Conflicts in Pegasus and Xu Raise Questions About Its Regulatory Reliability.

Today, asensio.com released a report questioning the accuracy and completeness of NASDAQ's disclosure about the departure of one of its leaders, Guangxun Xu. Apparently the only disclosure by NASDAQ on Xu's departure is a Reuters story on May 22, 2009, stating that Xu "has left the company."

The asensio.com report discloses information known but not revealed by NASDAQ. It also examines NASDAQ's unwillingness to investigate conflicts-of-interest in its listing operation that include the listing of questionable Chinese reverse mergers and its special failure to protect investors in NASDAQ's listing of Pegasus Wireless Corporation, which was a $1 billion stock fraud with known criminal ties and fictitious financial statements. See prior <a href="http://www.asensio.com/Reports/CompleteRecordCompany.aspx?CompanyId=153&CompanyName=Pegasus+Wire reports on Pegasus.

Observers could reasonably find that NASDAQ's conduct evidences profound conflicts-of-interest that create a preference to aid and abet questionable stock promoters over protecting investors, and to suspect that NASDAQ's Xu disclosure is disingenuous.

In the Pegasus incident, NASDAQ and its leaders ignored the warnings about Pegasus from Christopher Byron, who is one of the nation's most respected and experienced investigate journalists with 41 years of professional experience, and who is also a New York Times best-selling author. At the time of the Pegasus incident Mr. Bryon was the author of weekly full page business column in the New York Post.

Not only did Mr. Byron author an article about Pegasus and the NASDAQ but coincidentally had written an earlier article on Bodisen Biotech, Inc. (OTC: BBCZ), which is the company that is central to understanding the significance of the Xu controversy.

In both the Xu and Pegasus cases asensio.com informed NASDAQ about problems before the controversies became public.

NASDAQ's chief listing compliance official, Gary Sundick, was responsible for the Pegasus matter. Sundick failed detect the fraud during the pre-listing investigation before it was granted a NASDAQ listing.

The NASDAQ then ignored the notices that the Pegasus was a fraud, and NASDAQ even honored Pegasus by letting its CEO ring the NASDAQ opening bell. With the bell-ringing, NASDAQ also issued a promotional press release and a web interview with the CEO, which can still be found on the NASDAQ site.

NASDAQ and its listing investigations leader, Sundick, failed to take preventive or remedial action before and after Pegasus rang its bell. Within a few months of the bell-ringing, Pegasus was delisted from NASDAQ, and is now entirely defunct.

On May 26, 2009 the SEC filed a complaint against former Pegasus executives, alleging fraud. The complaint speaks of lies, fabrication, backdating of financial transactions, false reporting and forgery, printing of fake shares, the sale of the fake stock by dummy companies controlled by Pegasus' insiders, false statements, and fictitious debt.

The concerns about Xu again raise the issue of conflicts-of-interest in listings oversight at NASDAQ.

NASDAQ faces an inherent conflict-of-interest in listing oversight because it accepts fees from the same companies it is supposed to regulate. NASDAQ also has to compete to get new companies to list on its exchange. This may become especially evident with Chinese reverse mergers. A Wall Street Jounal article from May 2009 speaks of NASDAQ seeking new Chinese listings. Another article states that the NYSE lowered its requirements for Chinese companies this year in an effort to attract new business.

NASDAQ would also face conflicts-of-interest in acknowledging misconduct by an official involved in its listing operation who also engaged in accepting share-based compensation from companies seeking listing approval. Like any for-profit, publicly-traded company, NASDAQ would prefer that the matter remain private and allow such a person to resign. Should such activity were to exist and actually become public, NASDAQ could face a liability in the form of lawsuits from shareholders of wrongfully-listed companies that later fail. NASDAQ could also face sanctions from FINRA and the SEC for violations of securities laws.

Since NASDAQ has regulatory duties in addition to being a for-profit, publicly-traded corporation, there would seem to be greater concern for NASDAQ to cover up misconduct compared to other public companies. At the same time, there is a greater need for transparency for the sake of investor protection.