

NASDAQ and NYSE Provide Temporary Relief from Certain Continued Listing Requirements

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by James Guttman

In response to the COVID-19 pandemic, NASDAQ and NYSE are providing temporary relief from certain continued listing standards. As of now, NYSE American has not provided similar relief from its continued listing standards as a result of COVID-19.

Specifically, NASDAQ is providing relief from the continued listing bid price (\$1.00) and market value of publicly held shares listing requirements through June 30, 2020. While NASDAQ will continue to notify companies about new instances of non-compliance with bid price and market value of publicly held shares requirements during this period, compliance periods for any newly identified non-compliance will not begin until July 1, 2020. In addition, the compliance periods for any company previously notified about non-compliance will be suspended and resume on July 1. Starting on July 1, companies would receive the balance of any pending compliance period in effect at the start of the tolling period to regain compliance. NASDAQ will continue to monitor securities to determine if a company regains compliance during the relief period. A company can regain compliance by satisfying the minimum requirement for a minimum of 10 consecutive days.

The NASDAQ's Listing Center FAQ for COVID-19 can be found at the link below:
<https://listingcenter.nasdaq.com/assets/Listing%20Center%20Coronavirus%20FAQs%20for%20Nasdaq-listed%20Companies.pdf>

Similarly, the New York Stock Exchange ("NYSE") has announced a number of measures to assist companies during this tumultuous time. NYSE has agreed to toll any applicable compliance periods through June 30, 2020, related to having (i) both stockholders' equity of less than \$50 million and an average global market capitalization over a consecutive 30 trading-day period of less than \$50 million (the "\$50 Million Standard") or (ii) an average closing price of a company's shares below \$1.00 over a consecutive 30 day trading period ("Dollar Price Standard"). NYSE will continue to identify companies that fall below the \$50 Million Standard and the Dollar Price Standard and such companies will be required to (i) comply with the standard disclosure

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requirements set out in the Listed Company Manual (the “Manual”), and (ii) submit compliance plans within the standard time frames set out in the Manual. However, the time period to cure such deficiency (i.e., 18 months for the \$50 Million Standard and six months for the Dollar Price Standard) will only commence on July 1, 2020. Companies that are currently in a compliance period will have their compliance period tolled and it will recommence on July 1, 2020. A company can regain compliance during the tolling period by satisfying the standard cure requirements set out in the Manual.

NYSE has also suspended until June 30, 2020, the requirement that companies maintain an average global market capitalization over a consecutive 30 trading-day period of at least \$15 million (the “Market Capitalization Standard”). Under the suspension of NYSE’s Market Capitalization Standard, companies will not be notified of new events of noncompliance during the suspension period. However, following the temporary rule suspension, any new events of noncompliance with NYSE’s Market Capitalization Standard would be determined based on a consecutive 30 trading-day period commencing on or after July 1, 2020.

In addition, NYSE has instituted a partial waiver of the application of Section 312.03(b) of the Manual, which requires shareholder approval of any issuance to a director, officer or substantial security holder of the company (each a “Related Party”) or to an affiliate of a Related Party if the number of shares of common stock to be issued, or if the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either 1% of the number of shares of common stock or 1% of the voting power outstanding before the issuance. The waiver eliminates the shareholder approval requirement through June 30, 2020, but is specifically limited to transactions that involve the sale of the company’s securities for cash at a price that meets the Minimum Price requirement as set forth in Section 312.04 of the Manual. In addition, to qualify for this waiver, a transaction must be reviewed and approved by the company’s audit committee or a comparable committee comprised solely of independent directors. Furthermore, this temporary exemption may not be available if the proceeds are used to fund an acquisition.

Furthermore, NYSE has instituted a waiver of the shareholder approval requirement of Section 312.03(c) of the Manual until June 30, 2020, such that no shareholder approval is required to (i) issue on a private placement basis, greater than 20% of an issuer’s issued and outstanding shares, (ii) issue greater than 5% of the company’s issued and outstanding shares to a single investor, and (iii) undertake a “bona fide private financing” during that period in which there is only a single purchaser, so long as the issuances are for cash at a price greater than the Minimum Price. If any purchaser in such a transaction is a Related Party, the transaction must be reviewed and approved by the company’s audit committee or a comparable committee comprised solely of independent directors.

The SEC’s releases related to the rule changes can be found at the following links:
[sec.gov/rules/sro/nyse/2020/34-88572.pdf](https://www.sec.gov/rules/sro/nyse/2020/34-88572.pdf); [sec.gov/rules/sro/nyse/2020/34-88441.pdf](https://www.sec.gov/rules/sro/nyse/2020/34-88441.pdf);
[sec.gov/rules/sro/nyse/2020/34-88717.pdf](https://www.sec.gov/rules/sro/nyse/2020/34-88717.pdf)