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NYSE Takes Second Shot at Expanding Direct Listings Beyond Secondary Offerings

Insights
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The New York Stock Exchange LLC ("NYSE"), on December 11, 2019, filed a revised rule change proposal which would permit companies to sell shares in connection with its direct listing as well as make the direct listing process easier for more companies. The revised proposal follows the quick rejection by the Securities and Exchange Commission (SEC) of the NYSE's original proposed rule change. See our prior Client Alert for more information.

The existing NYSE direct listing rules (a) do not allow companies to raise capital by selling shares in the direct listing since only existing stockholders are permitted to sell shares and (b) require a company conducting a direct listing to have 400 round-lot shareholders (holding at least 100 shares) before the listing, which limits the ability and desire of many companies from pursuing this type of approach to liquidity. In a traditional underwritten public offering, it is not difficult to comply with the 400 round lot holder requirement, as through the underwriting process, the underwriters can make sure to allocate shares to a sufficient number of holders to comply with this rule.

NYSE's revised proposed rule change would (a) allow a company to raise capital in connection with its direct listing by selling newly issued shares into the market without an underwriter and (b) provide a grace period of up to 90 trading days after the initial listing date for the company to comply with the round-lot shareholder requirement, provided the company sells a certain amount of shares or the market value of a company's shares exceed certain specified thresholds.

Summary of Revised Proposed Rule Changes

Requirements for company to sell shares in a direct listing

As currently proposed, a company would meet the aggregate market value of shares requirement for a direct listing if it sold at least $100 million in market value of shares (rather than $250 million under the original proposal) in the NYSE's opening auction on the first day of trading or if the aggregate market value of shares to be sold by the company in the opening auction and the market value of publicly held shares exceeds $250 million. The valuation of the shares would be determined through the use of an independent 3rd party valuation firm (as is the case under the current direct listing process). The requirement for direct listings without the company raising capital would remain the same—namely that the company must demonstrate a market value of at least $100 million.

90-day grace period for having at least 400 round lot holders

As currently proposed, a company would obtain a 90-day grace period to demonstrate compliance with the requirement to have at least 400 round lot holders under the following circumstances:

- For primary direct floor listings, the company must either sell $250 million worth of shares in the opening auction; or the combined value of shares being sold by the company in the initial auction plus the market value of publicly-held shares exceeds $350 million.
- For selling shareholder direct floor listings, the company must demonstrate at the time of listing $350 million in aggregate market value of publicly-held shares.

If adopted, the revised proposed rules have the potential to significantly increase the number of IPOs that would occur via a direct listing. However, companies should consult with their legal and investment banking advisors to fully understand the benefits and risks associated with a direct listing IPO prior to pursuing this option.

If the SEC approves the revised proposed rule change, it is not expected to become effective until at least 45 days after its publication in the Federal Register.

The full text of the revised NYSE proposed rule can be found here.

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Jeffrey R. Vetter
PARTNER
P +1 650 321 2400

Keith J. Scherer
PARTNER
P +1 617 648 9231

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