

NYSE Modifies Certain Stockholder Approval Requirements on Temporary Basis

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Temporary waivers of related-party and 20% rules granted in light of COVID-19-related financing needs

Recognizing that many companies will have “urgent liquidity needs” in the coming months as a result of economic and market conditions related to the spread of COVID-19, on Monday the New York Stock Exchange **announced** temporary waivers to some of its stockholder-approval requirements for stock issuances. Importantly, however, the general requirement that stockholders of domestic companies approve any issuance of more than 20% of the outstanding stock in a private placement below the current market price will remain in place.

The waivers are effective immediately and will remain in place through June 30, 2020.

Modified Stockholder Approval Rules

The waivers apply to the stockholder approval requirements for certain stock issuances pursuant to Section 312.03 of NYSE’s **Listed Company Manual**.

- *Related party transactions:* The NYSE has granted partial waivers of the stockholder approval requirements for issuances of stock to a “related party.” The current rules provide that shareholder approval is required when the company sells stock to a related party if the stock to be issued exceeds 1% of either the number of shares or voting power outstanding before the issuance. A limited exception permits cash sales to substantial stockholders (who are not otherwise related to the company) of no more than 5% of the outstanding stock at a price that is no less than the current market price. The waiver permits sales of stock, without stockholder approval, to existing investors that exceed the 1% and 5% limits for cash at a price no less than the current market price. To qualify for this waiver, a transaction must be reviewed and approved by the company’s audit committee, and the transaction would still require stockholder approval if required under any other applicable rule, such as equity compensation or change-of-control requirements. The waiver does not apply to the issuance of stock in any transaction involving the acquisition of stock or assets of another company where a related party has a 5% or greater interest (or related parties collectively have a 10% or greater interest) in such company and the issuance of stock could result in an increase of 5% or more in outstanding stock or voting power.
- *20% or more transactions:* The NYSE has expanded the bona fide financing exception to the so-called 20% rule, which allows sales for cash at a price no less than the current market price of 20% or more of a company’s stock without stockholder approval if no purchaser acquires more than 5%. The temporary accommodation waives the 5% limitation for a bona fide private sale in which there is only a small number of investors, including private sales to only one purchaser. The transaction would, however, still require stockholder approval if required under any other applicable rule, such as equity compensation or change-of-control requirements.

The Nasdaq stockholder approval rules do not have similar requirements to those being waived by the NYSE. These waivers provide NYSE-listed companies with the flexibility on a temporary emergency basis to consummate transactions without stockholder approval that would not require stockholder approval under the rules of the Nasdaq Stock Market.

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