

NYSE Rule Filing Contemplates Direct Listings Without Concurrent IPO

July 10, 2017 | Client Update | 2-minute read

The NYSE has [proposed to change its rules](#) to provide for companies to list without the usual process of an underwritten IPO and registering under the Exchange Act. Various news articles indicate that Spotify is considering a direct listing in early 2018.

The traditional methods of listing on a stock exchange include either an underwritten IPO, transfer from another market or a spinoff. The NYSE also has discretion to list companies that have previously sold common stock in a private placement, at the time a registration statement is filed to allow existing shareholders to sell their shares becomes effective. It considers whether a company has met the \$100 million aggregate market value of the publicly held share requirement based on a third-party valuation and the most recent trading price in a private placement market.

Currently, the rules do not provide for a company listing in connection with the effectiveness of an Exchange Act registration statement in the absence of a Securities Act registration, such as by filing a Form 10 with the SEC. The NYSE rule filing proposes to allow companies to list upon effectiveness of a Form 10.

In addition, the NYSE intends to provide an exception to the private placement market trading requirement for companies when there is a recent valuation available indicating at least \$250 million in the market value of publicly held shares, since some companies that are sufficiently large do not have their securities traded on any private markets. Spotify is reported to be valued as much as \$13 billion.

According to the NYSE, the proposal is necessary to permit it to compete for listings with the NASDAQ Stock Market. NASDAQ's rules do not address how it determines compliance with its initial listing market capitalization requirements for private companies seeking to list without a concurrent IPO. However, over time NASDAQ has listed a number of previously private companies in conjunction with the effectiveness of a selling shareholder registration statement, and the NYSE believes that NASDAQ could take the position that it could also permit a direct listing for a company filing a Form 10 registration statement.

The rule filing requires a financial adviser to perform similar functions as an underwriter would in an IPO, consistent with NASDAQ rules governing listings without IPOs. It also modifies the requirements related to designated market makers and procedures for the opening trade on the initial listing.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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