Davis Polk

Nasdaq Proposes to Modify Shareholder Approval Rule

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Nasdaq is **proposing** to change the requirements in Listing Rule 5635(d) for shareholder approval when a company issues common stock (or securities convertible into or exercisable for common stock) in a non-public offering that equals or exceeds 20% or more of the common stock or voting power outstanding prior to the issuance. Under the **proposed rule amendment**, a 20% issuance priced below the lower of the closing price (as reported on **Nasdaq.com**) at the time of the transaction and the five-day trailing average of the closing price would require shareholder approval. This would replace the pricing test in the current rule, which requires shareholder approval for 20% issuances below the greater of book value or the closing bid price. The proposed rule amendment defines the lower of the closing price and the five-day trailing average as the "Minimum Price." The proposed rule amendment does not change the way in which the conversion price for convertible securities is calculated for purposes of the pricing test in Listing Rule 5635(d).

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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