

Nasdaq Proposes to Modify Shareholder Approval Rule

February 20, 2018 | Client Update

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.

John M. Brandow

+1 212 450 4648
john.brandow@davispolk.com

Bruce K. Dallas

+1 650 752 2022
bruce.dallas@davispolk.com

Joseph A. Hall

+1 212 450 4565
joseph.hall@davispolk.com

Ray Ibrahim

+1 212 450 6155
ray.ibrahim@davispolk.com

Michael Kaplan

+1 212 450 4111
michael.kaplan@davispolk.com

Mark M. Mendez

+1 212 450 4829
mark.mendez@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.

Related materials

[2018-02-20-nasdaq-proposes-modify-shareholder-approval-rule.pdf](#)