

SEC Approves NYSE Rule to Facilitate Listing Without an IPO

Tuesday, February 13, 2018

On February 2, the Securities and Exchange Commissions approved a New York Stock Exchange (NYSE) rule change that facilitates the listing of companies on the NYSE without a prior registration statement under the Securities Exchange Act of 1934 (Exchange Act) in connection with an underwritten initial public offering. As previously discussed, the NYSE had previously filed and withdrew the proposed rule change. Thereafter, the NYSE elected to move forward with the rule change and filed amendments, including a final Amendment No. 3. The NYSE noted that the proposed rule change would enable the NYSE to compete for listings of companies that the NYSE believes would be able to list on the Nasdaq Stock Market, but would not be able to list on the NYSE under its then-current rules.

The rule change amends Footnote (E) of Section 102.01B of the NYSE Listed Company Manual. As previously discussed i, the NYSE generally lists companies in connection with a firm commitment underwritten initial public offering (IPO), a transfer from another market or a spin-off. Companies seeking to be listed in connection with an IPO must demonstrate that they have \$40 million in market value of publicly-held shares. Other companies must demonstrate they have \$100 million in market value of publicly held shares. For a company that has not previously had its common equity securities registered under the Exchange Act (and is seeking to list without a related underwritten offering upon effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements), the current rule provides that the NYSE will, on a case by case basis, exercise discretion to list such company and determine whether it has satisfied the \$100 million market value requirement based upon the lesser of (1) an independent third-party valuation of the company; and (2) the most recent trading price of the company's common stock in a trading system for unregistered securities (a so-called "private placement market").

As a result of the rule change, in the absence of any recent trading in a private placement market, the NYSE will determine that a company has met its market value of publicly held shares requirement if the company provides an independent third-party valuation evidencing at least \$250 million in market value of publicly held shares (eliminating the requirement of a private placement market trading price). The independent party providing the valuation must have "significant experience and demonstrable competence in the provision of such valuations." The rule change also provides that a valuation agent will not be deemed "independent" if that valuation agent, or any affiliated person, (1) owns in the aggregate 5% of the securities to be listed, or (2) has provided investment banking services to the company in the 12 months prior to the valuation or in connection with the listing.

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