

NYSE and Nasdaq Address COVID-19 by Relaxing Listing Standards

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In response to the economic fallout of COVID-19, the New York Stock Exchange (NYSE) and Nasdaq are issuing new proposals and guidance to listed companies.

NYSE

On April 3, 2020, the NYSE filed a [proposal](#) with the SEC requesting a suspension of some of its Listing Standards, including the minimum \$50 million market capitalization and \$1.00 trading price rules. The NYSE also filed a [proposal](#) that would lessen shareholder approval requirements for certain transactions. Below, this post discusses both the requirements and benefits of both these proposals.

TOPIC	NYSE RULE REFERENCE	CURRENT DESCRIPTION	PROPOSAL AND MODIFICATION
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Shareholder Approval ¹	312.03	<p>NYSE rules require shareholder approval of certain transactions, including (i) issuance of securities to a related party or (ii) transactions relating to 20% or more of the company's outstanding common stock or 20% of the voting power outstanding.</p> <p>NYSE rules give an exception to the 20% or more limitation with a "bona fide private financing" carve-out if it involves (a) a sale where a broker-dealer purchases the securities intending to make a private sale of the securities or (b) the issuer sells securities to multiple purchasers and no one purchaser, or group of related purchasers, acquires more than 5% of the issuer's common stock or the issuer's voting power.</p>	<p>NYSE modified Rule 312.03 so that it is partially suspended through June 30, 2020, with the waiver specifically limited to transactions that involve the sale of the company's securities for cash at a price that meets the minimum price requirements set forth in Rule 312.04.</p> <p>The NYSE proposal would also waive through June 30, 2020, for purposes of the bona fide financing exception, the 5% limitation for any sale to an individual investor in a private financing pursuant to Rule 312.03(c).</p>
Listing Standards	802.01B, C	<p>Currently, the NYSE requires that listed companies maintain at least a \$50 million average global market capitalization over a consecutive 30-day period, as well as \$50 million in equity. The NYSE also requires listed companies to maintain a minimum \$1.00 average closing price over a consecutive 30-day period for their common stock.</p>	<p>NYSE is proposing to suspend the application of its \$50 million market capitalization and \$1.00 price continuing listing requirements through June 30, 2020.</p> <p>Under the proposal, companies wouldn't be notified of new events of non-compliance and new identifications of non-compliance would be determined after a consecutive 30-day period starting on July 1, 2020.</p>

While Nasdaq has not yet provided the same type of relief as the NYSE, on March 26, 2020, Nasdaq released [new guidance](#) for its listed companies:

TOPIC	NASDAQ RULE REFERENCE	DESCRIPTION
Periodic Reporting Obligations	5250(c)	<p>Nasdaq companies that are impacted by COVID-19 and satisfy the conditions of the <u>SEC's COVID-19 Relief Order</u> (granting a 45-day extension for filings) will not be deficient under Rule 5250(c) for failing to file Exchange Act reports by existing deadlines.</p> <p>Companies that are ineligible to use the COVID-19 Relief Order, but are unable to file by a periodic due date, can submit a plan describing how they plan to regain compliance and could receive an additional six months to file.</p>
Annual Meetings and Proxy Statements	5250(b),(d)	<p>Virtual Meetings: Nasdaq rules permit virtual meetings if permissible under relevant state law and shareholders have the opportunity to ask questions of management.</p> <p>Proxy Mailings: Nasdaq rules require that companies make available their proxy statements. However, if common carrier service has been suspended due to COVID-19, Nasdaq will waive those requirements if the company complies with the <u>SEC's Order</u> addressing the issue of mailings (e.g., making a good faith effort to deliver such materials).</p>
Shareholder Approval Rules	5635(d)	Listed companies in financial distress can receive a waiver from shareholder approval requirements (which are typically imposed in acquisition transactions, equity-based compensation plans, changes in control, or certain private placements) if they file a Rule Interpretation Request demonstrating how a delay caused by shareholder approval would jeopardize its financial viability and how the proposed transaction would be beneficial.
Listing Rules	Varies	Nasdaq rules permit virtual meetings if permissible under relevant state law and shareholders have the opportunity to ask questions of management.
Hearings Panel	Varies	When a company receives a delisting determination, it may request a hearings panel review the matter at a written or oral hearing, typically held within 45 days of the request.

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^[1] Please note that the NYSE Shareholder Approval proposal became effective immediately.

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