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BLOG

Nasdaq and NYSE Provide Temporary Price-Based Continued Listing Requirement Relief

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U.S. and global market conditions have experienced market-wide declines as a result of the COVID-19 pandemic. In light of these unprecedented circumstances, many companies are struggling to remain in compliance with the price-based continued listing standards of the New York Stock Exchange (the NYSE) and The Nasdaq Stock Market LLC (Nasdaq). In response, the Securities and Exchange Commission (SEC) has declared immediately effective proposed rule changes by both the NYSE and Nasdaq. These rules toll compliance periods for price-based continued listing requirements and aim to provide companies relief by offering longer time periods to regain compliance with applicable listing standards. Please see below for a more detailed explanation of the changes.

Nasdaq

Nasdaq's continued listing rules require companies with primary equity listed on the Nasdaq Global Market to maintain a minimum bid price of $1 and a market value of publicly held shares of at least $5 million under the equity standard or $15 million under the market value standard (*see* Nasdaq Listing Rule 5450). The minimum bid price requirement is the same for companies with primary equity listed on the Nasdaq Capital Market; however, the market value standard for these companies is at least $1 million (*see* Nasdaq Listing Rule 5550). If a company fails to meet the applicable continued listing standard for a period of 30 consecutive trading days, Nasdaq will promptly notify the company of the failure and the company will have 180 days from the notification to achieve compliance by meeting the applicable standard for at least 10 consecutive trading days during the compliance period.

Because of the increased downward pressure on stock prices resulting from the impact of COVID-19, Nasdaq acknowledges that there will be an increase in price-based non-compliance and current market uncertainty results in additional challenges for companies to seek compliance by utilizing reverse stock splits, additional equity sales, or other typical measures to increase a company's stock price. Therefore, since April 17, 2020, the compliance period for price-based continued listing standards has been tolled through and including June 30, 2020, to allow Nasdaq-listed companies to focus on their business operations and the health and safety of their employees, customers, and communities. However, during the tolling period, Nasdaq is continuing to actively monitor company compliance, notify companies about new instances of non-compliance, maintain and add to its list of non-compliant companies, and require Nasdaq-listed companies to comply with the obligation to make a public announcement disclosing the receipt of any notification from Nasdaq by filing a Form 8-K (where required by SEC rules) or by issuing a press release. When the tolling period ends on July 1, 2020, companies will be provided the balance of any pending compliance period that remained at the start of the tolling period, and companies falling out of compliance during the tolling period will have the full 180 days to regain compliance.

NYSE

Shortly after Nasdaq tolled its compliance periods, the NYSE filed with the SEC, and the SEC declared effective immediately on April 21, 2020, a rule change providing similar relief to NYSE-listed companies that have fallen out of compliance with its price-based continued listing standards. Currently, NYSE-listed companies must maintain an average closing price of more than $1.00 and an average global market capitalization of above $50 million (*see* Section 802.01 of the NYSE Listed Company Manual). Failure to meet either of these standards for a period of 30 consecutive trading days will result in the company being deemed non-compliant. The relief offered by the NYSE provides companies with longer time periods to regain compliance with these price-based continued listing standards by tolling compliance periods through and including June 30, 2020.

In the midst of the current crisis resulting from COVID-19, the NYSE has stated that it believes it is “undesirable” and “unrealistic” to impose burdens of returning to compliance with these price-based listing standards while conditions are still unpredictable. Nevertheless, similar to Nasdaq, the NYSE will continue to identify non-compliant companies, notify such companies of their noncompliance, and attach a BC indicator to tickers of noncompliant companies. Additionally, non-compliant companies still must make a public announcement disclosing non-compliance by filing a Form 8-K (where required by SEC rules) or by issuing a press release. The requirement to submit compliance plans within specified timeframes still applies, and the NYSE will continue to review progress under such plans on a quarterly basis throughout the tolling period. If a company fails to meet material aspects or quarterly milestones of its compliance plan, the NYSE reserves the right to commence delisting proceedings prior to the end of the maximum compliance plan period.

If a NYSE-listed company falls out of compliance during the tolling period, that time will not count toward the maximum applicable compliance plan period of 18 months with respect to the $50 million market capitalization standard or six months with respect to the $1.00 average closing price standard. Thus, if a company is already in a compliance period related to either listing standard when the tolling period beings, the compliance period will stall and recommence on July 1, 2020. Those companies newly identified as out of compliance during the tolling period will calculate their compliance plan periods beginning on July 1, 2020. The tolling period will not provide any additional compliance periods if the NYSE has already commenced delisting proceedings against the company.

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