

## Changes Ahead: New Proposals to the Nasdaq Primary Direct Listings Rule

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On May 19, 2021, the Securities and Exchange Commission (**SEC**) approved the Nasdaq Stock Market LLC's (**Nasdaq**) proposal to allow companies to directly list their equity securities on the exchange without an underwriter. The rule allows direct listings with a capital raise (**DLCRs**). Following the SEC's approval, there was discussion over whether more consideration should be given to the pricing range limitation mechanism associated with DLCRs. In December 2021, the SEC announced an amendment to the proposed rule change, with the aim of addressing the concerns surrounding Listing Rule IM-5315-2 and more clearly aligning the rule with existing SEC rules.

The table below provides a description of the new proposals:

ITEM	REQUIREMENT
<b>Quantity of Shares</b>	The quantity of shares must be specified in the registration statement.
<b>Requirements for pricing a DLCR at more than 20% above the range</b>	<p>There are three additional requirements for pricing a DLCR at more than 20% above the range:</p> <ul style="list-style-type: none"> <li>• Requirement that the registration statement contains sensitivity analysis as to different potential offering prices.</li> <li>• Introduction of the Post-Pricing Period.</li> <li>• Requirement of the Post-Pricing Certification by the Company.</li> </ul>

ITEM	REQUIREMENT
<b>Market Orders from the Nasdaq Halt Cross (the Cross)</b>	Market Orders (other than by the company) will be eliminated from the Cross.
<b>Free Price Discovery Data</b>	Nasdaq will undertake to disseminate, free of charge, the Current Reference Price, on a public website, such as Nasdaq.com, during the Pre-Launch Period and to indicate whether the Current Reference Price is within the price range established by the issuer in its effective registration statement.
<b>Cross-Notice Requirements</b>	Nasdaq also proposes to adopt a new Price Volatility Constraint and disseminate information about whether the Price Volatility Constraint has been satisfied, which will indicate whether the security may be ready to trade. The change will let investors know the Cross is near execution.
<b>Member Notification Requirements</b>	Before a customer places an order to be executed in the Cross, members will be required to provide to such customer a notice describing the mechanics of pricing a security subject to a DLCR in the Cross, including information regarding the dissemination of the Current Reference Price by Nasdaq on a public website such as Nasdaq.com.
<b>Alignment with SEC Rules</b>	Proposed conforming changes to Rule 4120(c)(9), Listing Rule IM-5315-2, and Rules 4753(a)(3)(A) and 4753(b)(2) will provide more clarity to the DLCR process.

Nasdaq affirms that the proposals of Amendment No. 2 will help “remove impediments to and perfect the mechanism of a free and open market” by making “the rules easier to understand and apply.”

The SEC must make its final decision on this proposal by February 25, 2022. Capital Markets Watch will continue to monitor developments in the Nasdaq direct listing process and will provide our readers with updates as they become available.

## Authors

Michael J. Blankenship

J. Eric Johnson

John P. Niedzwiecki

Robert Allan Oakes, IV

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Michael J. Blankenship



J. Eric Johnson



John P. Niedzwiecki



Robert Allan Oakes, IV

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