NYSE Proposes Relaxed Shareholder Approval Requirements for Sales to Substantial Security Holders

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On September 26, 2023, the New York Stock Exchange (the "Exchange") proposed an amendment to the requirements for when a listed company is obligated to obtain shareholder approval for the sale of securities to a "substantial" security holder of the company (defined as an interest consisting of 5% or more of the number of shares of common stock or five percent or more of the voting power outstanding).

Currently, Section 312.03(b)(i) of the Exchange's Listed Company Manual requires shareholder approval before the issuance of common stock to a director, officer or substantial security holder of the company, if the number of shares of common stock to be issued will exceed either 1% of the number of shares of common stock or one percent of the voting power outstanding prior to the issuance (subject to an exception for cash sales that meet a "Minimum Price" requirement).

These requirements exist so as to avoid the potential for a listed company's stockholders to obtain superior terms on their purchase of shares from the company due to an existing position of influence on the company's board or management. However, the current rule does not differentiate between those potentially influential stockholders and passive stockholders who have no board or management representation and present limited risk for these potential conflicts of interest.

The proposed amendment to Section 312.03(b)(i) would limit its application to nonpassive parties who are part of the listed company's "control group," as defined in Exchange Act Rule 13d-5 and disclosed on Form 13D or 13G. This change would allow companies to raise capital from their passive substantial stockholders without the costs and delay that a shareholder vote would impose.

The Exchange believes that the rule change will enable listed companies that regularly require additional capital for day-to-day liquidity or strategic investments to look more easily to their existing significant stockholders who may be more inclined to invest in companies they already know. The Exchange believes that this proposed rule change may also allow for increased competition among listing venues, as the Exchange is the only listing exchange in the United States to have this 1% limitation on raising capital from existing stockholders.

The proposal would not alter the requirement for shareholder approval for sales of securities involving 20% or more of the issuer's common stock or that would result in a change of control.

Comments on the proposed amendment are due by November 18, 2023.

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