

Client Update

SEC Approves NYSE Rule Change to Facilitate “Direct Listings” by Privately Held Companies

On February 2, 2018, the SEC approved a proposed rule change by the New York Stock Exchange (the “NYSE”) that is intended to facilitate “direct” listings by private companies on the NYSE without a typical underwritten initial public offering (“IPO”). The rule change is reflected in Footnote (E) of Section 102.01B of the NYSE’s Listed Company Manual.

A company may generally list its equity securities for trading on the NYSE only in connection with a typical underwritten IPO, upon transfer of its listing from another stock exchange or pursuant to a spin-off. The NYSE also has rule-based discretion to list a company’s equity securities for trading if the company desires to register shares held by existing shareholders for resale only, but only if the company: (i) has previously sold common equity securities in a private placement and (ii) has demonstrated that it had \$100 million aggregate market value of publicly-held shares based on both an independent third-party valuation and the most recent trading price for the securities in a private placement market (shares held by directors, officers or their immediate families and other concentrated holdings of 10% or more are excluded in calculating the number of publicly-held shares).

In connection with the proposed rule change, the NYSE acknowledged that the direct listing rule’s requirements could cause difficulties for certain companies that are otherwise qualified for listing, noting that some companies that are clearly large enough to be suitable for listing on the NYSE do not have their securities traded on a private placement market prior to going public and that private placement market trading may be too limited to provide a reasonable basis for reaching conclusions about a company’s qualification.

The revised NYSE rule addresses this challenge for many private companies and allows for a direct listing of a company’s common equity, even if there has been no recent trading in a private placement market, if the company’s publicly-held shares have a \$250 million aggregate market value based on an independent third-party valuation.

A company seeking to do a direct listing, however, must file with the SEC and have declared effective a registration statement (e.g., a Form S-1 or Form F-1) for the registered resale of some or all of its shares sold by the company in earlier private placements. This resale registration statement would be subject to the traditional SEC registration statement review and comment process, which the company could run concurrently with a similar process for the company's registration statement to effect the direct listing on the NYSE.

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Please do not hesitate to contact us with any questions.

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