

CORONAVIRUS RESOURCE CENTER

NYSE Provides Temporary Relief from Certain Shareholder Approval Rules

April 10, 2020

In response to the current COVID-19 pandemic, the New York Stock Exchange has temporarily waived certain of its requirements relating to shareholder approval for new equity issuances (see the full notice [here](#)). The temporary relief, which went into effect on April 6, 2020 and will continue through June 30, 2020, is intended to provide NYSE-listed companies flexibility to raise capital quickly during the COVID-19 crisis.

The relief expands certain of the current exceptions to the NYSE shareholder approval requirements for issuances of equity securities (i) to related parties or (ii) that constitute more than 20% of the issuer's outstanding common stock or voting power ("20% transactions"). The waivers do not provide any relief from the shareholder approval requirements for issuances of securities in connection with equity compensation or change of control transactions.

The waivers facilitate capital raisings from individual investors or small groups of investors, including existing shareholders and related parties. These waivers put NYSE-listed companies on equal footing with companies listed on Nasdaq, which does not have requirements corresponding to those being waived by the NYSE.

Related Party Transactions. Current NYSE rules require shareholder approval whenever a listed company issues equity securities (whether common stock or securities convertible into or exercisable for common stock) to a director, officer or "substantial security holder," or to certain entities related thereto (each a "related party"), where the securities to be issued exceed 1% of the issuer's outstanding common stock or voting power prior to the issuance. If related party status results solely from being a

substantial security holder and the issuance meets specified Minimum Price¹ requirements, shareholder approval is required only if the securities to be issued exceed 5% of the issuer's outstanding common stock or voting power prior to the issuance. The temporary relief waives these 1% and 5% limitations provided that the sale is for cash, meets the Minimum Price requirement and is approved by the company's audit committee or a comparable committee comprised solely of independent directors. Note that the waiver does not apply to certain M&A transactions in which a related party has an interest.

20% Transactions. The current "bona fide private financing" exception to the 20% rule permits (among other things) sales of securities for cash where the Minimum Price requirement is met so long as no one purchaser, or group of related purchasers, acquires more than 5% of the shares of the company's common stock or voting power prior to the sale. The temporary relief waives this 5% limitation for such bona fide private financing transactions but does not waive the Minimum Price requirement.

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For more information regarding the coronavirus, please visit our [Coronavirus Resource Center](#).

Please do not hesitate to contact us with any questions.

¹ "Minimum Price" is defined as the lower of: (i) the most recent closing price of the company's common stock immediately preceding the signing of the agreement to issue the securities and (ii) the average closing price for the five trading days immediately preceding the signing of the agreement to issue the securities.



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