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NYSE Temporarily Relaxes Shareholder Approval Rules

Recognizing that many companies may have urgent liquidity needs as a result of the COVID-19 pandemic, the New York Stock Exchange has waived, through June 30, 2020, certain requirements of its shareholder approval rules in order to provide greater flexibility for private placements of equity.

Issuances to Related Parties. NYSE Rule 312.03(b) requires shareholder approval of an issuance of common stock (or securities convertible or exercisable for common stock) to a director, officer or "substantial security holder," or certain entities related to such "Related Parties," if the number of shares of common stock to be issued (or underlying the securities) exceeds 1% of the number of shares or voting power outstanding before the issuance. The limitation is 5% in the case of an issuance to a substantial security holder that meets a "Minimum Price" requirement, defined as the lower of (i) the official closing price immediately preceding the signing of the binding agreement and (ii) the average official closing price for the five trading days immediately preceding the signing of the binding agreement. The NYSE's waiver temporarily eliminates the 1% and 5% limitations, provided that the sale is for cash, meets the Minimum Price requirement and is approved by the audit committee. In addition, the waiver does not apply to certain M&A transactions in which a Related Party has an interest.

Bona Fide Private Financings under the 20% Rule. NYSE Rule 312.03(c) requires shareholder approval of an issuance relating to 20% or more of the voting power or number of shares outstanding before the issuance. The rule has an exception for a "bona fide private financing" that allows (among other things) a sale for cash that meets the Minimum Price requirement, provided that no one purchaser or group of related purchasers acquires more than 5% of the company's common stock or voting power before the sale. The NYSE's waiver temporarily eliminates this 5% limitation.

The waivers do not exempt issuances from the equity compensation and change of control requirements of the shareholder approval rules.

The effect of the waivers is to make it easier to raise capital from an investor or small group of investors, including existing major shareholders, which can provide critical flexibility in the current environment. The waivers also temporarily put NYSE-listed companies on the same footing as NASDAQ-listed companies, as the requirements being waived do not exist in the NASDAQ rules.

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