

NYSE Continues Its Efforts to Expand Direct Listings

December 17, 2019

Recently, the Securities and Exchange Commission rejected the [proposal by the New York Stock Exchange](#) to allow for primary sales of stock by companies going public using direct listings. The SEC did not offer its reasons for the rejection, but recent events suggest that the SEC was looking for more comprehensive rules from the NYSE. On Wednesday and then again on Friday of last week, the NYSE admirably obliged, submitting a revised (and then again revised) [proposal to the SEC](#).

The new proposal again seeks to broaden the scope of direct listings to allow for primary sales of shares by listing companies (as opposed to just sales by pre-listing stockholders on the exchange currently authorized under direct listings) and makes some revisions to (hopefully) better address two other NYSE listing rules:

- The market value of the company's shares must be equal to either (i) \$100 million of publicly held shares based on an independent third-party valuation *and* the most recent trading price in existing liquid market for current stockholders or (ii) \$250 million of publicly held shares based solely on an independent third-party valuation if there is no existing liquid market for current stockholders (the market value requirement)
- The company must have at least 400 round lot holders and 1.1 million publicly held shares at the time of listing (the distribution requirement)

The NYSE proposal would allow companies to meet the market value requirement through either (i) the sale of at least \$100 million of stock in the opening auction or (ii) the sale of less than \$100 million, but evidence that the aggregate market value of the shares sold and the publicly held shares of pre-listing stockholders is at least \$250 million. In addition, the proposal seeks to allow companies to meet the distribution requirement following a grace period (90 days following listing, with potential extension under certain circumstances) if the company either (i) sells at least \$250 million in shares in the opening auction, (ii) demonstrates \$350 million in market value of publicly held shares or (iii) sells less than \$250 million in shares in the opening auction, but the aggregate of the market value of publicly held shares immediately prior to listing and the market value of shares sold by the company in the opening auction is at least \$350 million.

We cannot be certain whether the changes from the initial proposal address specific concerns from the SEC or whether the revised proposal will ultimately be approved by the SEC, but we applaud the NYSE's continued attempts to make direct listings more accessible to a broader range of companies that seek to raise money in connection with their listing. We are hopeful the SEC will give these potential future direct listing companies a nice holiday present before the New Year.

The Cooley capital markets group will continue to update you as these matters develop.

[Read our 10 considerations for going public with a direct listing](#)

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