

SEC APPROVES ADDITIONAL NYSE CONTINUED LISTING COMPLIANCE RELIEF

Apr 28, 2020

– New NYSE Relief Proposal Tracks SEC-Approved Nasdaq Temporary Rule

The SEC approved yet another temporary measure related to the continued listing rules of the New York Stock Exchange on April 21, 2020. This time, the NYSE sought and received immediate effectiveness of a [proposed rule change](#) to assist listed companies who may fall out of compliance with the \$50 million market capitalization and \$1.00 price continued listing requirements by providing a tolling period through June 30, 2020. The NYSE originally sought SEC approval to suspend these requirements until June 30, 2020, citing the unprecedented market declines resulting from the ongoing COVID-19 pandemic, but the proposal was rejected.

Companies that fail to maintain either of these NYSE continued listing standards are typically notified by the Exchange of their noncompliance and then must promptly issue a press release and file any required Form 8-K. Listed companies have up to 18 months to regain compliance with the \$50 million market capitalization requirement and up to 6 months to regain compliance with the \$1.00 trading price standard under the existing rules. Under the temporary rule, the Exchange will continue to notify listed companies of any noncompliance, companies will still be required to issue a press release and file the required Form 8-K, but the cure periods will be tolled until June 30, 2020, meaning that the 18-month or 6-month cure period will be calculated as beginning on July 1, 2020.

The Exchange still intends to attach a “.BC” indicator to those noncompliant companies’ tickers and to continue to identify noncompliant companies on the Exchange’s website. In addition, companies will still be required to submit compliance plans within the time frames required by the existing rules and the Exchange intends to review progress under those plans on a quarterly basis.

Any listed company that is currently in a “compliance period” relative to either the \$50 million market capitalization requirement or the \$1.00 trading price requirement will have its compliance period tolled and recommence on July 1, 2020.

The temporary tolling period is in addition to the previously approved [NYSE suspension](#) until June 30, 2020 of the NYSE continued listing requirement that companies maintain an average global market capitalization over a consecutive 30 trading-day period of at least \$15 million. Under this

suspension, companies are not being notified of new events of noncompliance and, after the suspension, any new events of noncompliance with this standard will be determined on a 30 trading-day period commencing on or after July 1, 2020.

The approved NYSE rule change related to market capitalization and trading price looks a lot like the [Nasdaq rule change](#), approved for immediate effectiveness by the SEC on April 17, 2020. This temporary rule also provides for a tolling period until June 30, 2020 to give Nasdaq-listed companies additional time to regain compliance with Nasdaq's continued listing requirements related to the bid price and market value of publicly held shares. As with the NYSE proposal, the Nasdaq proposal cited the market consequences of the ongoing COVID-19 crisis and stated that the decline in general investor confidence had resulted in depressing stock prices of companies "that otherwise remain suitable for continued listing." Under the temporary Nasdaq rule, the Exchange will continue to monitor the requirements and companies will be notified of new instances of noncompliance with these requirements. As provided by existing Nasdaq rules, if notified of such a noncompliance during the tolling period, the listed company must make a public announcement of the notification and file any required Form 8-K. Under the temporary rule, those companies will have 180 days to regain compliance beginning on July 1, 2020. Those Nasdaq-listed companies notified of noncompliance in advance of the effectiveness of the temporary rule will be given the additional time for compliance starting July 1, 2020. A company may be eligible for a second 180-day compliance period if it satisfies the conditions for eligibility at the conclusion of the first compliance period as contemplated by existing rules. Nasdaq will continue to maintain a list of noncompliance issuers on its website, including those who become noncompliant during the tolling period.

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