

April 30, 2020

## **COVID-19 Update for Public Companies: Nasdaq and NYSE Tolling Periods**

In light of the continuing, unprecedented decline in the U.S. and global equity markets, the NYSE and the Nasdaq Stock Market recently modified their listing requirements relating to market capitalization and \$1.00 minimum price (in the case of NYSE-listed companies) and to market value of publicly held shares and \$1.00 minimum bid price (for Nasdaq-listed companies), in each case by tolling the applicable compliance periods.

While the Nasdaq action is its first rule change in response to COVID-19, in March, the NYSE temporarily waived certain listing requirements under its shareholder approval rules and temporarily suspended its global market capitalization standard. For more information on the earlier COVID-19-related NYSE relief, see our prior alert [here](#).

### **Nasdaq's Tolling of Compliance Periods**

On April 17, 2020, the SEC approved, with immediate effect, Nasdaq's proposed rule change (available [here](#)) that provides a longer period of time for listed companies to regain compliance with listing requirements related to bid price<sup>1</sup> and market value of publicly held shares<sup>2</sup> by tolling compliance periods until June 30, 2020. Nasdaq will continue to monitor these requirements during the tolling period and inform companies of any new instances of noncompliance. Companies will be required to make public announcements disclosing any new noncompliance by issuing a press release or, if required by SEC rules, filing a Form 8-K.

Starting on July 1, 2020, affected companies will have the benefit of any pending compliance period (in effect at the start of the tolling period) to return to compliance with the applicable listing requirements.<sup>3</sup>

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<sup>1</sup> The minimum bid price is \$1.00. The continued listing requirements relating to bid price are set forth in Rules 5450(a)(1), 5460(a)(3), 5550(a)(2), and 5555(a)(1) and the related compliance periods are set forth in Rule 5810(c)(3)(A).

<sup>2</sup> The market value of publicly held shares ranges from \$5,000,000 to \$15,000,000 depending on which listing standard applies. The continued listing requirements relating to market value of publicly held shares are set forth in Rules 5450(b)(1)(C), 5450(b)(2)(C), 5450(b)(3)(C), 5460(a)(2), 5550(a)(5), and 5555(a)(4), and the related compliance period is set forth in Rule 5810(c)(3)(D).

<sup>3</sup> The release includes the following example: if a company is 120 days into its first 180-day compliance period for a bid price deficiency when the tolling period starts and the company does not regain compliance before June 30, 2020, the company

Companies that become noncompliant during the tolling period will have 180 days from July 1, 2020 to return to compliance.<sup>4</sup>

### **NYSE's Tolling of Compliance Periods**

The NYSE's proposed rule change was approved, with immediate effect, by the SEC on April 21 (available [here](#)). Pursuant to the relief, the compliance period for the following two listing requirements will be tolled through June 30, 2020, so that any time period for which a company is deemed out of compliance during the tolling period would not count towards the applicable cure period:

- the maximum 18-month compliance period for companies that have become noncompliant with the applicable market capitalization standard<sup>5</sup> as a consequence of having both stockholders' equity of less than \$50,000,000 and an average global market capitalization over a consecutive 30 trading-day period of less than \$50,000,000; and
- the maximum six-month compliance period for companies that have become noncompliant with the \$1.00 price requirement for capital and common stock<sup>6</sup> as a consequence of the average closing price of their stock having fallen below \$1.00 over a consecutive 30 trading-day period.

The NYSE will continue to identify companies that fail to meet these listing requirements and to notify them of noncompliance. Any company so notified during the tolling period will need to issue a press release and, where required by SEC rules, file a Form 8-K.

Companies that became noncompliant prior to the start of the tolling period will have their compliance period tolled, but they nonetheless will be required to submit a compliance plan within the time frames set forth in the NYSE rules. The NYSE will review progress under the plans on a quarterly basis during the tolling period and has the authority to initiate delisting proceedings prior to the end of the maximum compliance period if the company fails to meet the material aspects of the compliance plan or any of the

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would have an additional 60 days, starting on July 1, 2020, to regain compliance. The 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.

<sup>4</sup> Companies involved in a hearing process will be able to take advantage of the tolling of compliance periods, but only if they have not yet had a hearing before a Hearing Panel and the determination to delist has not yet been reached by the time the tolling period starts.

<sup>5</sup> See Section 802.01(B) of the NYSE Listed Company Manual. This \$50,000,000 requirement should not be confused with the \$15,000,000 sub-threshold, breach of which can result in suspension and delisting without a cure period. That \$15,000,000 sub-threshold was temporarily suspended in March 2020.

<sup>6</sup> See Section 802.01(C) of the NYSE Listed Company Manual.

quarterly milestones in that plan. A company that has become subject to delisting proceedings initiated by the NYSE prior to April 21, 2020 will not be able to take advantage of the new tolling accommodation.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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