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SEC Approves Amendment to NYSE Shareholder Approval Requirements

On December 26, 2023, the SEC approved an [amendment](#) to the New York Stock Exchange's shareholder approval requirements in the case of certain issuances to a substantial security holder. Under amended Section 312.03(b)(i) of the NYSE Listed Company Manual, listed companies will no longer be required to get shareholder approval for issuances to substantial security holders in excess of 1% which are below the Minimum Price¹ where such substantial security holders are not "Active Related Parties" – i.e., controlling stockholders or members of a control group or have an affiliated person serving as an officer or director of the listed company.²

Issuances to substantial security holders (regardless of whether they are Active Related Parties or not) remain subject to other NYSE shareholder approval requirements, including Section 312.03(c) of the NYSE Listed Company Manual, which requires shareholder approval for issuances in excess of 20% of the outstanding at a price below the Minimum Price, and Section 312.03(b)(ii), which requires shareholder approval for issuances to substantial security holders (regardless of their control status or affiliated directors or officers), where such securities are issued as consideration in a transaction or series of related transactions in which such substantial security holder (or a director or officer) has a five percent or greater interest (or such persons collectively have a ten percent or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into common stock, could result in an issuance that exceeds either five percent of the number of shares of common stock or five percent of the voting power outstanding before the issuance.

In proposing this amendment, the NYSE noted that issuances to substantial security holders that are not Active Related Parties do not pose the same potential conflicts of interest as issuances to those shareholders who participate in the listed company's governance or management and have the ability to influence decision making. This amendment will more closely align the NYSE's shareholder approval requirements with those of Nasdaq and ease listed companies' ability to raise capital from existing shareholders.

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¹ The Minimum Price is defined in Section 312.04(h) of the NYSE Listed Company Manual as the lower of (i) the official closing price on the NYSE as reported to the Consolidated Tape (the "Official Closing Price") immediately preceding the signing of the binding agreement; or (ii) the average Official Closing Price for the five trading days immediately preceding the signing of the binding agreement.

² For purposes of Section 312.03(b)(i) of the NYSE Listed Company Manual, "control" has the same meaning as defined in Rule 12b-2 of Regulation 12B under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and "group" means a group as determined in accordance with Section 13(d)(3) or Section 13(g)(3) of the Exchange Act.

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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