Skadden | Capital Markets Alert

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SEC Approves Nasdaq Rule Change on Reverse Stock Splits and Minimum Bid Price Compliance Periods; NYSE Proposes a Similar Rule Change

On October 7, 2024, the Securities and Exchange Commission (SEC) approved a rule change proposed by The Nasdaq Stock Market LLC that impacts companies utilizing reverse stock splits to regain compliance with Nasdaq's minimum bid-price requirement for continued listings.

The new rule amends Nasdaq Listing Rule 5810(c)(3)(A) to modify the application of the minimum bid-price compliance periods where a listed company takes a corporate action to achieve compliance with the $1.00 minimum bid price requirement for continued listings (the Bid Price Requirement), such as a reverse stock split, and such corporate action causes noncompliance with another listing requirement. As a result of the new rule, a company will not be deemed to have corrected the initial Bid Price Requirement noncompliance until the company cures any resulting deficiency. The New York Stock Exchange (NYSE) has proposed a similar rule change.

Historical Background

Under Nasdaq Rule 5550(a)(2) (Primary Equity Security listed on the Nasdaq Capital Market) and Rule 5450(a)(1) (Primary Equity Security listed on the Nasdaq Global or Global Select Markets), Nasdaq-listed companies are required to maintain a minimum bid price of at least $1.00 per share. If a company's bid price falls below $1.00 per share for 30 consecutive business days, Nasdaq will deem the company noncompliant and issue a deficiency notice. The company has 180 calendar days from the date of the deficiency notice to regain compliance by maintaining a minimum bid price above $1.00 for at least 10 consecutive business days during the applicable compliance period (unless Nasdaq exercises its discretion to extend this 10-day period).

Historically, companies have utilized reverse stock splits to regain compliance with the Bid Price Requirement. However, reverse stock splits often decrease (i) the number of publicly held shares and (ii) depending on how fractional shares are treated, the number of public stockholders, in each case leading to noncompliance with other Nasdaq listing standards, such as the requirement to maintain at least 500,000 publicly held shares and 300 public stockholders. Before the approval of the new rule, companies had a 45-calendar-day period to submit a compliance plan to Nasdaq staff, and up to 180 additional calendar days to address the secondary deficiency, thus extending the compliance process beyond the initial bid-price deficiency period.

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The New Rule

Under the new rule, a company will not be considered to have regained compliance with the Bid Price Requirement if the company takes a corporate action, such as a reverse stock split, to achieve compliance with the Bid Price Requirement and that action results in noncompliance with another Nasdaq listing requirement. In such event, the company will continue to be considered noncompliant until it (i) cures the additional deficiency **and** (ii) thereafter meets the Bid Price Requirement for a minimum of 10 consecutive business days (unless Nasdaq staff, at their discretion and within the framework of the new requirements, extends this period). Companies can no longer utilize additional compliance periods otherwise available for secondary deficiencies. If the company does not regain compliance with the Bid Price Requirement and the additional deficiency during the initial compliance period applicable to the Bid Price Requirement noncompliance, Nasdaq will issue a Staff Delisting Determination Letter.

Impact on Nasdaq-Listed Companies

The new Nasdaq rule took effect on October 7, 2024. As a result, any Nasdaq-listed company that fails to meet the Bid Price Requirement will need to evaluate the potential impact of a reverse stock split on the company's compliance with other Nasdaq continued listing requirements, which includes maintaining at least (i) 500,000 publicly held shares, (ii) 300 public stockholders and (iii) a value of publicly held shares of at least $1 million.

NYSE Proposal

On October 10, 2024, the NYSE proposed a similar rule change to limit the conditions under which a listed company could use a reverse stock split to meet the company's minimum-price criteria. Like the new Nasdaq rule, this proposal would prevent a company from conducting a reverse stock split if the action results in the company's shares falling below the continued-listing requirements of Section 802.01A of the Listed Company Manual (which generally covers the minimum number of shareholders and the minimum number of publicly held shares).

Additionally, the NYSE proposal would amend Section 802.01C of the Listed Company Manual to provide that if a company's share price fails to meet the minimum-price criteria, and (i) the company has undertaken a reverse stock split within the past year or (ii) has performed one or more reverse stock splits over the past two years with a cumulative ratio of 200 shares or more to one, then the company will not be eligible for any compliance period specified in Section 802.01C of the Listed Company Manual. In such cases, the NYSE will immediately begin suspension and delisting procedures.

Although the SEC has not yet approved the NYSE proposal, its similarities to the new Nasdaq rule suggest that some form of limitation on the use of reverse stock splits will likely be imposed for companies listing on the NYSE.

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