

A Closer Look At New NYSE, Nasdaq Listing Rule Changes

By **Daniel Anderson, Geoffrey Liebmann and Jacqueline Hennelly** (April 7, 2025)

Throughout 2024 and early 2025, the U.S. Securities and Exchange Commission has approved a variety of changes to the listing rules of the New York Stock Exchange and the Nasdaq relating to reverse stock splits, minimum share price requirements and related grace periods, required liquidity for initial listings, and other matters.

In addition, Nasdaq repealed its rule relating to board diversity disclosure following a federal court's vacatur of the SEC's order originally approving the rule.

This article summarizes the more significant of these changes.^[1] Unless otherwise noted, all of the listing rule changes described below have been approved by the SEC and are effective.

Reverse Stock Splits

NYSE

On Jan. 15, the NYSE^[2] changed its rules regarding reverse stock splits^[3] in two respects.

The first rule change relates to the compliance period applicable when an NYSE-listed company's average closing price per share is less than \$1.00 for 30 consecutive trading days, and the company engages in a reverse stock split — or other action that requires stockholder approval — in order to regain compliance with the minimum share price requirement.

Prior to this rule change, any NYSE-listed company in this situation would have had six months from receipt of notice from the NYSE, or until the company's next annual meeting to obtain the necessary stockholder approval, after which such company must promptly implement the approved action, in order to avoid the commencement of delisting proceedings.

With the rule change, none of these periods for regaining compliance would be available, and the NYSE can commence delisting proceedings if the company has engaged in either (1) a reverse stock split during the previous one-year period, even if the company was in compliance with the share price criteria at the time of the prior reverse stock split; or (2) one or more reverse stock splits during the previous two-year period, with a cumulative ratio of 200 shares or more to one.

The second NYSE rule change relating to reverse stock splits prohibits an NYSE-listed company from engaging in a reverse stock split if doing so results in the company's shares falling below the NYSE's continued listing criteria regarding share distribution.

These criteria provide that delisting may result if (1) a company's shares are held by less



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than 400 stockholders, (2) the company's shares are held by less than 1,200 stockholders and the average monthly trading volume of the shares is less than 100,000 shares for the most recent 12 months, or (3) the number of publicly held shares is less than 600,000.

With this rule change, a company engaging in a reverse stock split without regard to this limitation will not be allowed to submit a plan to regain compliance or follow the other procedures set forth in the NYSE's listed company manual, and the NYSE would immediately commence delisting procedures.

Nasdaq

Similar to the NYSE, the Nasdaq has changed its listing rules, approved by the SEC on Jan. 17, relating to reverse stock splits to provide that, in the event a Nasdaq-listed company's shares fail to maintain a minimum bid price of at least \$1.00 per share and the company has engaged in a reverse stock split during the prior one-year period, the company will not be eligible for the 180-day compliance period that would otherwise apply — even if the company was in compliance with the minimum bid price requirement at the time of the prior reverse stock split — and the Nasdaq can commence delisting proceedings.[4]

Notably, Nasdaq rules already provide that the compliance period is not available if the company has engaged in one or more reverse stock splits during the previous two-year period, with a cumulative ratio of 250 shares or more to one.

The Nasdaq has also changed its rules specific to reverse stock splits, by requiring that a Nasdaq-listed company proposing a reverse stock split notify the Nasdaq of the reverse stock split no less than 10 calendar days prior to the record date stockholder approval of the reverse stock split. Previously, the Nasdaq's rules had required five business days' notice.

Minimum Bid Price Requirements: Nasdaq

The Nasdaq has changed its listing rules relating to the minimum bid price of listed shares in two respects.[5]

Before these changes:

1. A Nasdaq-listed company whose shares failed to maintain a minimum bid price of at least \$1.00 per share was provided an automatic 180-day period from the date the Nasdaq notifies the company of such failure in which to regain compliance;
2. A Nasdaq Capital Market-listed company may, subject to certain requirements, have been eligible for a second 180-day period;[6] and
3. The Nasdaq's hearing panel had the authority to allow a company up to an additional 180 days to regain compliance, resulting in the possibility that a Nasdaq-listed company could be in noncompliance with the minimum bid price requirement and continue to be listed on the Nasdaq for up to 540 days.

Also, in general, a timely request by a noncompliant company for a hearing stays the delisting proceeding until the hearing panel's decision.

The first Nasdaq listing rule change, approved by the SEC on Jan. 17, relating to minimum bid price requirements provides that a hearing request will no longer stay the suspension of trading if the company has already been afforded the second 180-day period referred to

above and has failed to regain compliance.

The second Nasdaq listing rule change, approved on Oct. 7, relating to minimum bid price requirements is that a company out of compliance with the bid price requirement will not be deemed to be back in compliance if it takes action to regain compliance — such as a reverse stock split — and that action causes the company to fail to meet the numeric threshold of another listing requirement, without regard to any other compliance period that would be available for that other listing requirement.

For example, this can happen if a company engages in a reverse stock split that, because the number of outstanding shares is reduced by the reverse stock split, causes the company to be out of compliance with Nasdaq's listing requirement relating to share distribution. In such a case, the company would be deemed out of compliance until both the second deficiency is cured and the company meets the bid price requirement for a minimum of 10 consecutive trading days.

Other Matters

Initial Listing Liquidity: Nasdaq

Approved on March 12, the Nasdaq changed its listing rules regarding how certain of its initial listing liquidity requirements are to be calculated in the context of initial public offerings and uplistings to the Nasdaq from the over-the-counter market.[7]

In the context of an IPO, companies seeking to list on the Nasdaq must satisfy a minimum market value of unrestricted publicly held shares,[8] the amount of which varies depending on the market — the Nasdaq Global Market or the Nasdaq Capital Market — on which the company is seeking to be listed, and which test or tests (based on income, equity, market value or total assets/total revenue) are applicable.

Before these rule changes, shares previously issued and registered for resale as part of the offering — and not held by officers, directors, or stockholders who own 10% or more of the shares — were included in calculating the market value of unrestricted publicly held shares, as well as the shares being sold in the offering. Under the updated rules, resale shares are excluded from that determination, meaning only the proceeds of the unrestricted publicly held shares sold in the offering are included.

In the context of an uplisting to the Nasdaq by a company listed on the over-the-counter market, either the company must satisfy a test based on its average daily trading volume or the listing must be in connection with a firm commitment underwritten public offering of at least \$4 million. Under the updated rules, resale shares are excluded in determining the size of the public offering, and the minimum amount of the public offering has been increased from \$4 million to (1) \$5 million for an uplisting to the Nasdaq Capital Market, and (2) \$8 million for an uplisting to the Nasdaq Global Market.

The changes relating to initial listing liquidity will become effective on April 11.

Phase-In Schedules for Corporate Governance Requirements: Nasdaq

Approved by the SEC on Aug. 26, the Nasdaq changed its rules regarding the phase-in of certain of its corporate governance requirements.[9]

In the context of initial public offerings:

1. The requirement that a company have one independent director on its nominating and compensation committees at the time the company's shares are first listed has been changed to allow companies to place a director on each such committee by the time the IPO closes or five business days after first listing, whichever is earlier;
2. The requirement that a company have two independent directors on its compensation committee at the time the company's shares are first listed has been changed to allow companies to have only one independent director on such committee by the initial listing, and two independent directors on such committee by one year after the initial listing; and
3. The requirement that a company have three independent directors on its audit committee at the time the company's shares are first listed has been changed to allow companies to have only one independent director on such committee by the initial listing, two independent directors on such committee within 90 days of the initial listing and three independent directors on such committee by one year after the initial listing.

Similar changes have been made to the Nasdaq's corporate governance rules relating to carveout and spinoff transactions.

Change in Primary Business Focus: NYSE

The NYSE changed its listing rules on July 24 to:

1. Require that any listed company that has changed its primary business focus to provide notice thereof to the NYSE;
2. Provide that the NYSE will conduct a continued listing analysis of any listed company that has changed its primary business focus, regardless of whether the listed company provides the required notice; and
3. Give the NYSE sole discretion to subject a listed company to suspension of trading and delisting in accordance with its procedures if the company has changed its primary business focus to either a new area of business that it was not engaged in, or that was immaterial to its operations, at the time of its original listing.[10]

The NYSE's assessment will focus on whether the NYSE would have accepted the company for initial listing if it had engaged in the changed business at the time of initial listing, and will not apply quantitative standards. It will, however, focus on other changes occurring in connection with the business change, such as changes in management or the board, ownership, or financial structure.

Board Diversity: Nasdaq

In 2021, the SEC entered an order approving additional disclosure rules for Nasdaq-listed companies that were designed to promote board diversity.[11]

These rules:

1. Mandated the disclosure of certain statistics relating to the board of directors including "self-identified gender, [self-identified] race, and self-identification as LGBTQ+";
2. Required each company "to have, or explain why it does not have," at least two directors

who self-identify as "diverse," or as "either female or an underrepresented racial or sexual minority"; and

3. Provided access to a "network of board-ready diverse candidates" to any companies that did not meet the foregoing requirements.[12]

However, on Dec. 11, 2024, the U.S. Court of Appeals for the Fifth Circuit ruled that the SEC had exceeded its authority under the Exchange Act in approving these rules, rejecting the argument, among others, that such disclosure protects investors and the public interest. In light of the Fifth Circuit's vacatur of the SEC's order, the Nasdaq proposed on Jan. 16, and the SEC approved on Jan. 24, the Nasdaq's repeal of these rules.[13]

Conclusion

The majority of the NYSE's and the Nasdaq's recent listing rule changes are directed at making it more difficult for listed companies that are out of compliance with the stock exchanges' respective listing rules to become compliant or extend compliance periods without demonstrating substantive improvement. As a result, listed companies at risk of noncompliance or facing delisting will have fewer means at their disposal for regaining compliance.

In light of these changes, the often oversimplified reaction of addressing any minimum share price concerns by engaging in a reverse stock split will no longer be appropriate, and companies will now need to parse these rules and consider the ramifications with greater care.

The listing rule changes regarding initial listing liquidity, adopted in response to the Nasdaq's observed higher volatility upon the launch of IPOs when resale shares are included in determining unrestricted publicly held shares, seem to be directed to improving market stability.

The remaining changes addressed above, while addressing more specific topics, should nonetheless be borne in mind by companies phasing in their corporate governance requirements or considering material changes to their business.

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[1] Note, however, that certain rule changes applicable to special purpose acquisition companies (SPACs) and foreign private issuers are not addressed in this memorandum.

[2] See SEC Release No. 34-102201; File No. SR-NYSE-2024-48, January 15, 2025.

[3] Generally, a "reverse stock split" is a proportionate decrease in the number of shares, but not the total value of shares, held by stockholders, with the ratio of shares held before and after the reverse stock split being determined by the board and the reverse stock split itself usually requiring stockholder approval. Stockholders maintain the same percentage of equity ownership as before the reverse stock split. For example, a 1-for-2 reverse stock split would result in stockholders owning one share for every two shares owned before the reverse stock split.

[4] See SEC Release No. 34-102245; File No. SR-NASDAQ-2024-045, January 17, 2025, and SEC Release No. 34-101693; File No. SR-NASDAQ-2024-068, November 21, 2024.

[5] See SEC Release No. 34-102245; File No. SR-NASDAQ-2024-045, January 17, 2025, and SEC Release No. 34-101271; File No. SR-NASDAQ-2024-029, October 7, 2024.

[6] The Nasdaq Capital Market is one of the three tiers within Nasdaq (the other two being the Nasdaq Global Market and the Nasdaq Global Select Market) and generally includes smaller market capitalization companies. As a result, its listing requirements are generally less strict than the other tiers.

[7] See SEC Release No. 34-102622; File No. SR-NASDAQ-2024-084, March 12, 2025.

[8] Nasdaq defines "Unrestricted Publicly Held Shares" as shares that are not held by an officer, director, or 10% or more stockholder and are not subject to any resale restrictions.

[9] See SEC Release No. 34-100816; File No. SR-NASDAQ-2024-019, August 26, 2024.

[10] See SEC Release No. 34-100585; File No. SR-NYSE-2024-21, July 24, 2024.

[11] See SEC Release No. 34-92590; File Nos. SR-NASDAQ-2020-081; SR-NASDAQ-2020-082, August 6, 2021.

[12] See *Alliance for Fair Board Recruitment v. SEC*, 2024 WL 5078034 (5th Cir. Dec. 11, 2024) at 1-3, 5, 19. <https://www.ca5.uscourts.gov/opinions/pub/21/21-60626-CV0.pdf>.

[13] See SEC Release No. 34-102281; File No. SR-NASDAQ-2024-007, January 24, 2025, and Cahill Gordon & Reindel LLP's previous memorandum on this topic dated February 14, 2025, which can be found [here](#).