



SEC Approves Nasdaq's Direct Listing Rule

Posted by Brian Hirshberg, Mayer Brown LLP, on Wednesday, June 9, 2021

Editor's note: Brian Hirshberg is partner at Mayer Brown LLP. This post is based on his Mayer Brown memorandum.

On May 19, 2021, the Securities and Exchange Commission ("SEC") approved proposed rule changes submitted by The Nasdaq Stock Market LLC ("Nasdaq") that allow companies to list in connection with a concurrent primary offering. The approved rule allows a company that has not previously had its equity securities registered under the Securities Exchange Act of 1934, as amended, to list its equity securities on the Nasdaq Global Select Market at the time of effectiveness of a registration statement pursuant to which the company will sell its shares in the opening auction on the first day of trading.

In determining whether the market value requirement for an initial listing is satisfied, Nasdaq will deem the requirement to be met if the amount of the company's unrestricted publicly-held shares before the offering, along with the market value of the shares to be sold by the company in its opening auction, is at least \$110 million (or \$100 million, if the company has stockholders' equity of at least \$110 million). For comparison, a company may list in connection with a traditional underwritten initial public offering with a minimum \$45 million market value. Nasdaq will calculate the market value using a price per share equal to the lowest price of the price range disclosed by the company in its registration statement (shares held by officers, directors or owners of more than 10% of the company's common stock are excluded from the calculation).

The rule changes also amend Nasdaq Rule 4702 in order to add a new order type, the "CDL Order," which must be submitted by the company in the opening auction for the full quantity of offered shares and must be executed in full. The price of the CDL Order must be set at or above the lowest price and at or below the highest price of the price range established by the company in its registration statement. The CDL Order cannot be modified or cancelled by the company once entered. [As we have blogged](#), the SEC previously approved a similar rule amendment by the New York Stock Exchange to allow a direct listing with a primary offering.

A link to the SEC's approval of the Nasdaq proposal can be found here: [Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, to Allow Companies to List in Connection with a Direct Listing with a Primary Offering In Which the Company Will Sell Shares Itself In the Opening Auction on the First Day of Trading on Nasdaq and to Explain How the Opening Transaction for Such a Listing Will be Effected \(sec.gov\)](#)