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NYSE MKT Listing Requirements

The following is written by Laura Anthony, Esq., a going public attorney focused on OTC listing requirements, direct public offerings, going public transactions, reverse mergers, Form 10 and Form S-1 registration statements, SEC compliance and OTC Market reporting requirements.

General Information and Background on NYSE MKT

The NYSE MKT is the small- and micro-cap exchange level of the NYSE suite of marketplaces. The NYSE MKT was formerly the separate American Stock Exchange (AMEX). In 2008, the NYSE Euronext purchased the AMEX and in 2009 renamed the exchange the NYSE Amex Equities. In 2012 the exchange was renamed to the current NYSE MKT LLC. The NASDAQ and NYSE MKT are ultimately business operations vying for attention and competing to attract the best publicly traded companies and investor following. The NYSE MKT homepage touts the benefits of choosing this exchange over others, including “access to dedicated funding, advocacy, content and networking and the industry’s first small-cap services package.”

Although there are substantial similarities among the different exchanges, and each is governed by the same overall SEC rules and regulations, each exchange also has its own unique differences. Moreover, each exchange has its own sets of rules and regulations that listing companies must comply with in order to obtain and maintain its listing qualification.

Like all exchanges, and the OTCQX tier of the OTC Markets, the NYSE MKT offers investor relations, broker-dealer networking and marketing services to its listed companies. The NYSE MKT’s distinctive formula is the Designated Market Maker (DMM) model (formerly referred to as a Specialist). A DMM is assigned to each security and uses both manual and electronic metrics and algorithms to help stabilize market price and trading volume.

NASDAQ does not have internal DMM's (or Specialists), but rather relies on market makers in general to increase volume and liquidity in NASDAQ traded securities and hopefully decrease volatility. Whereas the NYSE MKT relies on both manual (human) and electronic trading oversight, the NASDAQ is purely electronic. The NYSE MKT has an auction model run by the DMM's. The DMM reports all bids and asks into the marketplace, quoting the National Best Bid and Offer (NBBO) a required minimum percentage of time, and sets the opening price of its assigned securities each day. The opening price may be different than the prior day's closing price due to after-market trading or any other factor that affects supply and demand.

In other words, the DMM is an intermediary between the broker/dealer/market participants and the execution of trades themselves. It is thought that using a DMM will increase trading liquidity and volume, because the DMM is motivated to match buyers and sellers and fulfill trading requests by either using its own inventory of the security or finding broker-dealers with matching orders. A DMM may even solicit a broker-dealer to act as the counterparty to a requested trade.

NASDAQ does not have the auction or DMM model. Rather, NASDAQ relies on market makers. Market makers must quote both a firm bid price and firm ask price they are willing to honor. Each NASDAQ security has multiple market makers (generally at least 14) competing for trades, and helping to ensure that the bid-ask spread is low and that supply and demand results in the best execution prices.

Initial and Continuing Listing Standards

A company seeking to list securities on NYSE MKT must meet minimum listing requirements, including specified financial, liquidity and corporate governance criteria. NYSE MKT has broad discretion over the listing process and may deny an application, even if the technical requirements are met, if it believes such denial is necessary to protect investors and the public interest. Factors the NYSE MKT consider include, but are not limited to, the nature of a company's business; the market for its products; its regulatory history; its past corporate governance activities; the reputation of its management; its historical record and pattern of growth; its financial integrity (including filing for bankruptcy); its demonstrated earning power and its future outlook.

Once listed, a company must meet continued listing standards. In order to apply for listing on NYSE MKT, a company must complete and submit a listing application

including specified documents and information. The quantitative and qualitative standards for initial listing of U.S. companies on NYSE MKT (the “Exchange”) are summarized below.

NYSE MKT				
Listing Standards				
Criteria	Standard 1	Standard 2	Standard 3	Standard 4
Pre-tax Income ⁽¹⁾	\$750,00	N/A	N/A	N/A
Market capitalization	N/A	N/A	\$50 million	\$75 million or at least \$75 million in total assets and \$75 million in revenues ⁽¹⁾
Market value of public float ⁽²⁾	\$3 million	\$15 million	\$15 million	\$20 million
Minimum Price	\$3	\$3	\$2	\$3
Operating History	N/A	2 years	N/A	N/A

Shareholders' Equity	\$4 million	\$4 million	\$4 million	N/A
Public shareholders/Public float (shares) ⁽²⁾	Option 1: 800/500,000 Option 2: 400/1,000,000 Option 3: 400/500,000 ⁽³⁾			

(1) Required in the latest fiscal year, or two of the three most recent fiscal years.

(2) Public shareholders and public float do not include shareholders or shares held directly or indirectly by any officer, director, controlling shareholder or other concentrated (i.e., 10 percent or greater), affiliated or family holdings.

(3) Option 3 requires a daily trading volume of at least 2,000 shares during the six months prior to listing.

NYSE MKT Listing Fees

Number of Shares	Original Listing (Initial)	Continued Listing (Annual)
Up to 5 million	\$50,000	\$30,000 (minimum)
5 to 10 million	\$55,000	\$30,000
10 to 15 million	\$60,000	\$30,000
15 to 25 million	\$75,000	\$30,000
25 to 50 million	\$75,000	\$30,000

Number of Shares	Original Listing (Initial)	Continued Listing (Annual)
50 to 75 million	\$75,000	\$40,000
More than 75 million	\$75,000	\$45,000 (maximum)

Corporate Governance Standards

The NYSE MKT requires listed companies to adhere to its corporate governance standards, including:

Corporate Governance Requirement	Description
Distribution of Annual or Interim Reports	The company must make its annual and interim reports available to shareholders, either by mail or electronically through the company's website.
Independent Directors	The Exchange has various requirements regarding a company's independent directors and audit committee. Although generally the company's board of directors is required to have a majority of independent directors, there are several exceptions, such as for a controlled company or smaller reporting company.

<p>Audit Committee</p>	<p>The company is required to have an audit committee consisting solely of independent directors who also satisfy the requirements of SEC Rule 10A-3 and who can read and understand fundamental financial statements. The audit committee must have at least three members. One member of the audit committee must have experience that results in the individual's financial sophistication.</p>
<p>Compensation of Executive Officers</p>	<p>The company is required to have a compensation committee consisting solely of independent directors and having at least two members. In addition, Rule 5605(d)(2)(A) includes an additional independence test for compensation committee members. The compensation committee must determine, or recommend to the full board for determination, the compensation of the chief executive officer and all other executive officers.</p>
<p>Nomination of Directors</p>	<p>Independent directors must select or recommend nominees for directors.</p>

Code of Conduct	The company must adopt a code of conduct applicable to all directors, officers and employees.
Annual Meetings	The company is required to hold an annual meeting of shareholders no later than one year after the end of its fiscal year.
Solicitation of Proxies	The company is required to solicit proxies for all shareholder meetings.
Quorum	The company must provide for a quorum of not less than 33 1/3% of the outstanding shares of its voting stock for any meeting of the holders of its common stock.
Conflict of Interest	The Exchange requires a listed company to utilize its audit committee to conduct an appropriate review of all related party transactions on an ongoing basis.

<p>Shareholder Approval</p>	<p>The company is required to obtain shareholder approval of certain issuances of securities, including:</p> <ul style="list-style-type: none">· Acquisitions where the issuance equals 20% or more of the pre-transaction outstanding shares, or 5% or more of the pre-transaction outstanding shares when a related party has a 5% or greater interest in the acquisition target· Issuances resulting in a change of control· Equity compensation· Private placements where the issuance equals 20% or more of the pre-transaction outstanding shares at a price less than the greater of book or market value
<p>Voting Rights</p>	<p>Corporate actions or issuances cannot disparately reduce or restrict the voting rights of existing shareholders.</p>

The Seasoning Rules

The seasoning rules, which were adopted in late 2011, prohibit a company that has completed a reverse merger with a public shell from applying to list until the combined entity had traded in the U.S. over-the-counter market, on another national securities exchange, or on a regulated foreign exchange, for at least one year following the filing of all required information about the reverse merger transaction, including audited financial statements. In addition, the rules require that the new reverse merger company has filed all of its required reports for the one-year period, including at least one annual report.

In addition, the seasoning rule requires that the reverse merger company “maintain a closing stock price equal to the stock price requirement applicable to the initial listing standard under which the reverse merger company is qualifying to list for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days prior to the filing of the initial listing application.”

The rule includes an exception for companies that complete a firm commitment offering resulting in net proceeds of at least \$40 million.

In addition to the specific additional listing requirements contained in the new rule, the Exchange may “in its discretion impose more stringent requirements than those set forth above if the Exchange believes it is warranted in the case of a particular reverse merger company based on, among other things, an inactive trading market in the reverse merger company’s securities, the existence of a low number of publicly held shares that are not subject to transfer restrictions, if the reverse merger company has not had a Securities Act registration statement or other filing subjected to a comprehensive review by the SEC, or if the reverse merger company has disclosed that it has material weaknesses in its internal controls which have been identified by management and/or the reverse merger company’s independent auditor and has not yet implemented an appropriate corrective action plan.”

Benefits of Trading on the NYSE MKT

There are many benefits to trading on an exchange as opposed to the OTC Markets. The biggest benefits to an exchange are the ability to attract analyst coverage and institutional investors, and the corresponding increase in liquidity that comes with both. Stocks that trade on the NYSE MKT tend to have a lower bid-offer spread—again, encouraging trading volume and liquidity. Exchange traded securities are exempt from the penny stock definition, allowing for more market maker and broker-dealer participation. As further explained in my blog on the NASDAQ listing requirements, a broker-dealer cannot recommend a penny stock transaction to its retail clients, and therefore, no analysts, financial advisors, or institutional investors make recommendations for purchases of penny stocks.

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Securities Law Blog is written by Laura Anthony, Esq., a going public lawyer focused on OTC Listing Requirements, Direct Public Offerings, Going Public Transactions, Reverse Mergers, Form 10 Registration Statements, and Form S-1 Registration Statements. Securities Law Blog covers topics ranging from SEC Compliance, FINRA Compliance, DTC Chills, Going Public on the OTC, and OTCQX and OTCQB Reporting Requirements. Ms. Anthony is also the host of LawCast.com, the securities law network.

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