

Added text underlined;  
Deleted text in [brackets].

NYSE Listed Company Manual

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Section 312.03T Temporary COVID-19 Exception

(a) This Section 312.03T is operative until, and including, June 30, 2020. To rely on this rule, the company must submit the related supplemental listing application and certification pursuant to Section 312.03T(b)(5)(A) below and obtain the Exchange's approval of its utilization of the exception pursuant to Section 312.03T(b)(5)(B) below and thereafter sign a binding agreement no later than June 30, 2020. The issuance of the securities governed by such agreement may occur after June 30, 2020, provided the issuance takes place no later than 30 calendar days following the date of the binding agreement.

(b) Notwithstanding the requirements of Section 312.03(c), a listed company may issue securities without shareholder approval upon approval by the Exchange of an application demonstrating that the transaction satisfies the following requirements:

(1) the need for the transaction is due to circumstances related to COVID-19 and the proceeds will not be used to fund any acquisition transaction;

(2) the delay in securing shareholder approval would: (A) have a material adverse impact on the company's ability to maintain operations under its pre-COVID-19 business plan; (B) result in workforce reductions; (C) adversely impact the company's ability to undertake new initiatives in response to COVID-19; or (D) seriously jeopardize the financial viability of the enterprise;

(3) the company undertook a process designed to ensure that the proposed transaction represents the best terms available to the company;

(4) the company's audit committee or a comparable committee comprised solely of independent, disinterested directors (A) expressly approved reliance on this exception; and (B) determined that the transaction is in the best interest of shareholders.

(5) (A) The company must submit a supplemental listing application as required by Section 703.01(part one)(A) in relation to the applicable transaction along with a certification to the Exchange that it complies with all requirements of this Section 312.03T(b) (and Section 312.03T(c) if applicable) and describing with

specificity how it complies; (B) The Exchange must approve all transactions in advance of any issuance of securities in reliance on this Section 312.03T. Such approval of a company's reliance on this exception will be based on a review of whether the company has established that it complies with the requirements of Section 312.03T(b) (and Section 312.03T(c) if applicable).

(c) A transaction described in Section 312.03T(b) will not require shareholder approval under Section 312.03(b) or Sections 312.03(a) and 303A.08, provided that the transaction satisfies the following requirements:

(1) any participation by a Related Party or other person who is subject to Section 312.03(b) or Section 303A.08 (an "Affiliated Purchaser") must be less than 5% of the transaction;

(2) the participation of all Affiliated Purchasers collectively must be less than 10% of the transaction;

(3) the participation of any Affiliated Purchaser must have been specifically required by unaffiliated investors; and

(4) the Affiliated Purchasers must not have participated in negotiating the economic terms of the transaction.

(d) A company that relies on the exception in this Section 312.03T must make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release as promptly as possible, but no later than two business days before the issuance of the securities, disclosing:

(1) the terms of the transaction (including the number of shares of common stock that could be issued and the consideration received);

(2) that shareholder approval would ordinarily be required under Exchange rules but for the fact that the company is relying on this temporary exception to the shareholder approval rules; and

(3) that the audit committee or a comparable committee comprised solely of independent, disinterested directors expressly approved reliance on the exception and determined that the transaction is in the best interest of shareholders.

(e) Issuances pursuant to this Section 312.03T must comply with all other requirements of applicable Exchange rules, except as provided for herein.

(f) Other than a public offering for cash, securities issued in reliance on the exception in this Section 312.03T will be aggregated with any subsequent issuance at a discount to the Minimum Price if the binding agreement governing the subsequent issuance is executed

within 90 days of the prior issuance. If, following the subsequent issuance, the aggregate issuance (including shares issued in reliance on the exception) equals or exceeds 20% of the total shares or the voting power outstanding before the initial issuance, then shareholder approval will be required under Section 312.03(c) prior to the subsequent issuance.

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