

# ClientAlert

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## SEC Approves More Stringent Listing Requirements for Reverse Merger Companies

On November 9, 2011, the Securities and Exchange Commission approved new rules proposed by the NYSE, NASDAQ and NYSE Amex that require stricter listing requirements for “reverse merger” transactions, in which a private operating company goes public by merging into a public shell company. The rules were initially proposed by the exchanges earlier this year to address significant regulatory concerns, including accounting fraud allegations that arose involving reverse merger companies. The rules originally proposed by the exchanges substantially mirrored each other in requiring a “seasoning period” and minimum trading price before a reverse merger company would be eligible for listing but differed in the specific period and minimum price required, as well as in the exceptions to the stricter requirements. In early November, the exchanges each amended their proposed rules to harmonize the listing standards and the final rules approved by the SEC are substantially identical.

Under the new rules, a reverse merger company is required to undergo a one-year “seasoning” period before it can be eligible for listing on the NYSE, NASDAQ and NYSE Amex exchanges. Specifically, the rules require that:

- the equity securities of the reverse merger company must have traded in the U.S. over-the-counter market, on another national securities exchange, or a regulated foreign exchange following the consummation of the reverse merger for at least one year prior to applying for listing.
- the reverse merger company must have maintained a minimum closing stock price of, in the case of NYSE and NASDAQ, at least \$4 per share “for a sustained period of time, but in no event for less than 30 of the most recent 60 trading days” prior to filing of the listing application and the date the relevant exchange approves the listing. Instead of the \$4 requirement, NYSE Amex only 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.
- the reverse merger company must file with the SEC with information about the reverse merger transaction through which it was formed. NASDAQ rules require a reverse merger company to file “all required information about the transaction, including audited financial statements for the combined entity” while the NYSE and NYSE Amex rules specifically require a reverse merger company that is (i) a domestic issuer to file a Form 8-K including Form 10-equivalent information as well as all required audited financial statements or (ii) a foreign private issuer to file a Form 20-F with comparable information.
- the reverse merger company must file with the SEC all required reports since the reverse merger, including at least one annual report on Form 10-K or 20-F. The annual report must contain audited financial statements for a full fiscal year commencing after the filing date of the information about the reverse merger transaction with the SEC.

The new rules exempt reverse merger companies from the additional listing requirements if:

- a reverse merger company is listing in connection with an initial firm commitment underwritten public offering generating proceeds of at least \$40 million to the reverse merger company, which occurs concurrently with or after the reverse merger.

- the reverse merger company has satisfied the one-year trading requirement and filed with the SEC at least four annual reports, including all required audited financial statements.

In addition, companies formed by mergers with special purpose acquisition companies (SPACs) already listed on an exchange are not considered reverse merger companies for purposes of the seasoning requirements.

The new rules are effective immediately.

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