

The Door for Companies to Raise Capital through Direct Listings on Nasdaq Is Now Open

On May 19, 2021, the Securities and Exchange Commission (the "SEC") [approved](#) Nasdaq's proposed rule change permitting companies, at the time of its initial listing on the Nasdaq Global Select Market, to raise capital through direct listings (a "Primary Direct Listing"). The approved rules, which are similar to the NYSE's approved Primary Direct Listing rules, are summarized below.

✓ Capital Can Be Raised

- The new shares that the issuer can sell would be sold in the opening auction on the first day of trading on Nasdaq.
- Capital raised by the sale of newly issued shares will dilute existing stockholders.

✓ No Underwritten Component

- Even though capital will be raised, the fundraising will not entail an organized selling effort by investment banks.
- As noted in our November 29, 2019 [primer](#) on direct listings, financial advisors will still play a critical role. The SEC even reiterated that a financial advisor to an issuer engaged in a Primary Direct Listing "may, depending on the nature and extent of the financial advisor's activities and on the facts and circumstance, be deemed a statutory 'underwriter.'"

✓ Pricing and Sizing

- Registration statements in the Primary Direct Listing will have to include a price range within which the issuer anticipates selling its shares. This contrasts with direct listings with no capital raising component by the issuer ("Selling Stockholder Direct Listings") in which a range is not required.
- The opening auction price must be within the disclosed price range.
- In a traditional IPO, subject to meeting certain requirements, an issuer could price its IPO below the bottom end of the disclosed price range.
- Issuers will be required to submit an order for opening day trading specifying the number of shares offered by the issuer and such order would not be able to be cancelled or modified.

✓ Aggregate Market Value Analysis

- In a Primary Direct Listing, a company will be able to meet the Nasdaq requirement for shares held by non-affiliates having a minimum aggregate value if:
The aggregate market value of the shares the issuer will sell in the opening auction and the shares that are publicly held immediately prior to the listing is at least \$110M (or \$100M, if the issuer has stockholders' equity of at least \$110M), with such market value calculated using a price per share equal to the lowest price of the price range in the registration statement.

✓ The Dynamics of "Investor Day" / Direct Listing Roadshows Will Change

- While the investment banks will continue to not book-build during a Primary Direct Listing roadshow, given the desire to raise funds in connection with a Primary Direct Listing, a company's approach to direct listing roadshows may evolve.

✓ Optionality

- The ability to undertake a Primary Direct Listing is meant to be a supplement, not a replacement, to Selling Stockholder Direct Listings. As a result, when deciding whether to become a public company, a company can choose (a) either or both the Primary Direct or Selling Stockholder Direct Listing options, (b) a traditional IPO or (c) a SPAC.
- Any issuer listing in connection with a Primary Direct Listing or Selling Stockholder Direct Listing will continue to be subject to and need to meet all other applicable initial listing requirements.

If you have any questions regarding the proposed Primary Direct Listing or a Selling Stockholder Direct Listing, please contact [Dave Johnson](#), [Warren Lazarow](#), [Jeeho Lee](#), or [another Momentum team member](#).

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