Cross-Border Listings Guide - Nasdaq

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# Quick Summary

## Initial financial listing requirements

[Last updated: 1 January 2024, unless otherwise noted]

To qualify for listing on the Nasdaq Global Market, a company typically must meet at least one of the following tests:

**Income**

Annual pre-tax income of at least US$1 million (in the last fiscal year or two of the last three fiscal years).

Stockholders' equity of at least US$15 million.

Unrestricted publicly held shares with a market value of at least US$8 million.

At least three registered and active market makers.

**Equity**

Stockholders' equity of at least US$30 million.

At least a two-year operating history.

Unrestricted publicly held shares with a market value of at least US$18 million.

At least three registered and active market makers.

**Market value**

Listed securities with a market value of at least US$75 million.

Unrestricted publicly held shares with market value of at least US$20 million.

At least four registered and active market makers.

**Total assets/total revenue**

Total assets and total revenue of at least US$75 million each (in the last fiscal year or two of the last three fiscal years).

Unrestricted publicly held shares with a market value of at least US$20 million.

At least four registered and active market makers.

## Other initial listing requirements

[Last updated: 1 January 2024, unless otherwise noted]

*Share price.* The shares must have a bid price of at least US$4.

*Distribution.* To list its securities, a company must have:

At least 1.1 million unrestricted publicly held shares.

*At least 400 holders of 100 or more shares, with at least 50% of them holding unrestricted securities with a market value of at least US$2,500 (SPACs are excluded from this requirement).*

*Accounting standards*. Audited financial statements must be prepared in compliance with US GAAP or IFRS (as issued by IASB); or, if prepared in compliance with local GAAP (including any non-IASB IFRS), they must be reconciled to US GAAP. Domestic issuers must have US GAAP financials.

*Financial statements*. The registration statement must generally include three years' audited financial statements, provided that only two years of audited financials are required for "emerging growth companies".

*Operating history.* In most cases, Nasdaq does not require a specific length of operating history. However, a company listing under the equity standard (described in the left column) must have at least a two-year operating history.

*Management continuity.* Nasdaq does not require any specific period of continuity of management.

*Other markets.* Nasdaq also offers listings on the Nasdaq Global Select Market (which has the most stringent listing standards) and the Nasdaq Capital Market (which is designed for smaller capitalization companies). Information about these other Nasdaq markets is available upon request.

## Listing process

[Last updated: 1 January 2024, unless otherwise noted]

Listing involves registering the class of securities with the Securities and Exchange Commission. The SEC will typically review the registration statement, including the prospectus. The following is a fairly typical process and timetable for a listing of an issuer on Nasdaq via underwritten public offering in the US.

[Link to Timetable](https://resourcehub.bakermckenzie.com/en/-/media/crossborder-listings-handbook/files/2020-update-8th-edition/nasdaqlisting-process.pdf)

## Corporate governance and reporting

[Last updated: 1 January 2024, unless otherwise noted]

Requirements for public companies include, among others:

Audit committee of independent directors, or a board of auditors or similar body.

Meeting certain diversity requirements for the board of directors, or explaining the reasons for not doing so, and making certain annual disclosures regarding the diversity of the board.

CEO/CFO certifications in certain SEC filings.

Prohibitions on loans to executive officers.

Review of relationships with auditors.

Required reports by attorneys of evidence of material violations.

Protection of whistleblowers.

Code of ethics for senior and financial officers.

Potential forfeiture of CEO and CFO bonuses or certain other types of compensation as well as the recovery of incentive-based compensation that is erroneously "received" by current and former executive officers for fiscal periods preceding the date of an accounting restatement.

Restrictions on disparate reductions or restrictions of voting rights of common stockholders.

A listed "foreign private issuer" may elect to follow home country practices, but must publicly disclose how its corporate governance practices differ from domestic Nasdaq companies' practices and must submit to Nasdaq certain certifications.

A listed company has disclosure and reporting obligations both to Nasdaq and the SEC.

There are no US residency requirements for directors or officers.

## Fees

[Last updated: 1 January 2024, unless otherwise noted]

A company seeking to list must pay both initial listing fees and annual fees. The initial listing fee for Nasdaq Global Market is US$295,000, which includes a US$25,000 application fee. The annual all-inclusive fee, which covers all the ordinary costs of listing for the year, ranges from US$52,500 to US$182,500 for companies other than ADR issuers and from US$52,500 to US$94,000 for ADR issuers. The entry fee on any Nasdaq tier for a SPAC is US$80,000, which includes a US$5,000 application fee. Additional costs include printing expenses and registration fees required by the SEC, as well as legal and accounting fees.

# Overview of exchange

## Overview of exchange

[Last updated: 1 January 2024, unless otherwise noted]

The Nasdaq Stock Market (Nasdaq) has three listing tiers:

*Nasdaq Global Select Market*. This market has the most stringent initial listing standards. Listing on it is, according to Nasdaq, "a mark of achievement, leadership and stature for companies." Listed companies also receive certain additional support from Nasdaq.

*Nasdaq Global Market*. Listing requirements are somewhat less stringent than the Global Select Market. This market lists companies with an overall global leadership and international reach with their products or services.

*Nasdaq Capital Market*. This market is designed for smaller capitalization companies and is focused on its core purpose for those companies listed ― capital raising.

In addition, Nasdaq has also formed the PORTAL Alliance, a trading and transfer system for privately placed securities. The PORTAL Alliance provides a market for trading in 144A securities.

Historically, Nasdaq developed as the first electronic exchange and was designed for over-the-counter trading of shares that did not meet the listing requirements of other exchanges. It previously attracted smaller start-up companies which would eventually leave to list on higher-profile exchanges, such as the New York Stock Exchange (NYSE). Financial, industrial, healthcare and consumer companies now account for more than half of Nasdaq listings. In recent years, Nasdaq has become a major competitor of exchanges such as the NYSE and reportedly is today the largest electronic stock market in the US.

Any proposed listing would be subject to regulation by the appropriate division of Nasdaq and the US Securities and Exchange Commission (SEC). A proposed listing may also be subject to review by the US Financial Industry Regulatory Authority, Inc. (FINRA).

# Principal listing and maintenance requirements and procedures

## Principal listing and maintenance requirements and procedures

**In order to list on the Nasdaq markets, a listed company must typically register its securities with the SEC and file annual reports and other filings required by the SEC, as discussed in section 3 below.**

As far as Nasdaq's standards are concerned, there is no difference in financial requirements between a foreign company and a domestic company, and little difference between a primary and secondary listing. As discussed below, there are exceptions to corporate governance requirements for foreign companies, when their home country law differs from Nasdaq requirements for domestic companies.

There are specific financial, liquidity and corporate governance requirements for listing on each of the Nasdaq Global Select Market, the Nasdaq Global Market and the Nasdaq Capital Market. The corporate governance requirements are the same across all Nasdaq markets and are described in greater detail in section 5.

Additionally, a company that principally administers its business in a "Restrictive Market" jurisdiction is subject to additional listing criteria in each tier. Nasdaq defines a Restrictive Market as "[a] jurisdiction that does not provide the US Public Company Accounting Oversight Board (PCAOB) with access to conduct inspections of public accounting firms that audit Nasdaq-listed companies." A company’s business is considered to be principally administered in a Restrictive Market if: (i) the company’s books and records are located in that jurisdiction; (ii) at least 50% of the company’s assets are located in such jurisdiction; or (iii) at least 50% of the company’s revenues are derived from such jurisdiction.

*Nasdaq Global Select Market*

Companies (including those listing in connection with a Direct Listing) must meet all of the criteria under at least one of the four financial requirements below and the applicable liquidity requirements.

Ownership requirements. In order to list a primary equity security on the Global Select Market, the company's securities should have at least one of the following:

At least 550 total holders and average monthly trading volume over the past 12 months of at least 1.1 million shares.

At least 2,200 total holders.

A minimum of 450 holders of 100 or more shares, with at least 50% of them holding unrestricted securities with a market value of at least US$2,500 (SPACs are excluded from this requirement)

Additionally, if the company meets the Nasdaq Global Market Income Standard or Equity Standard discussed further below, then it is required to only have at least three registered and active market makers. Otherwise, it must have at least four registered and active market makers.

If the proposed listing is for American Depositary Receipts (ADRs), then at least 400,000 ADRs must be issued.

Market value requirement. In addition, there must be at least 1.25 million unrestricted publicly held shares, which must have either:

A market value of at least US$110 million.

A market value of at least US$100 million if the company has stockholders' equity of at least US$110 million.

In the case of a company listing in connection with an IPO or a company that is affiliated with (or is a spin-off from) another company listed on the Global Select Market, the security must have a market value of at least US$45 million.

In the case of a Direct Listing, if the company's security has had sustained recent trading in a private placement market, Nasdaq will attribute price, market capitalization and market value of unrestricted publicly held shares to the company equal to the lesser of: (i) the value calculable based on an independent third-party valuation, and (ii) the value calculable based on the most recent trading price in a private placement market. The party providing a valuation must have significant experience and demonstrable competence. Furthermore, for a security that has not had sustained recent trading in a private placement market prior to listing, Nasdaq will determine that the company has met the market value of unrestricted publicly held shares requirement if the company satisfies the applicable market value of unrestricted publicly held shares requirement and provides a valuation evidencing a market value of publicly held shares of at least US$250 million. Nasdaq will also determine the bid price and market capitalization based on such valuation.

Financial requirement. Furthermore, the company must have a minimum bid price of US$4 per share and meet one of the following four sets of criteria:

Aggregate pre-tax income from continuing operations of at least US$11 million over the prior three fiscal years, positive pre-tax income from continuing operations in each of the prior three fiscal years and at least US$2.2 million in pre-tax income in each of the two most recent fiscal years.

Aggregate cash flows of at least US$27.5 million over the prior three fiscal years, positive cash flows in each of the prior three fiscal years, average market capitalization of at least US$550 million over the prior 12 months and total revenue of at least US$110 million in the previous fiscal year.

Average market capitalization of at least US$850 million over the prior 12 months and total revenue of at least US$90 million in the previous fiscal year.

Market capitalization of at least US$160 million, total assets of at least US$80 million as of the most recently completed fiscal year and stockholders' equity of at least US$55 million as of the most recently completed fiscal year.

A company may list any additional security (for example, other classes of common stock, preferred stock or warrants) on the Global Select Market if that security qualifies for listing on the Global Market and the company's primary security is listed on and is qualified for listing on the Global Select Market.

Continued listing requirements. The criteria for a listed security to remain listed on the Nasdaq Global Select Market are the same as for the Nasdaq Global Market, and are discussed below.

*Nasdaq Global Market*

In order to list a primary equity security on the Nasdaq Global Market (other than a listing in connection with a Direct Listing), the listing must have:

A bid price of at least US$4 per share.

At least 1.1 million unrestricted publicly held shares.

At least 400 holders of 100 or more shares, with at least 50% of them holding unrestricted securities with a market value of at least US$2,500 (SPACs are excluded from this requirement).

If the proposed listing is for ADRs, then at least 400,000 ADRs must be issued.

Additionally, the company must meet at least one of the following four standards:

Income. The company must have:

Annual pre-tax income of at least US$1 million in the most recently completed fiscal year or in two of the three most recently completed fiscal years.

Shareholders' equity of at least US$15 million.

Unrestricted publicly held shares with a market value of at least US$8 million.

At least three registered and active market makers.

Equity. The company must have:

Shareholders' equity of at least US$30 million.

At least a two-year operating history.

Unrestricted publicly held shares with a market value of at least US$18 million.

At least three registered and active market makers.

Market value. The company must have:

Listed securities with a market value of at least US$75 million.

Unrestricted publicly held shares with market value of at least US$20 million.

At least four registered and active market makers.

Total assets/total revenue. The company must have:

Total assets and total revenue of at least US$75 million each for the most recently completed fiscal year or for two of the three most recently completed fiscal years.

Unrestricted publicly held shares with a market value of at least US$20 million.

At least four registered and active market makers.

Other requirements apply to the listing of preferred shares, secondary classes of common stock and rights and warrants, and there are alternative initial listing requirements available for companies whose business plan is to complete one or more acquisitions. Additionally, as previously noted above, a company listing in connection with a Direct Listing has different financial and liquidity requirements it must meet, descriptions of which are beyond the scope of this note.

Continued listing requirements. Nasdaq has the same continued listing standards for its Global Market and its Global Select Market. In order to continue to list primary equity securities on either market, the company must maintain a minimum bid price of US$1 per share and at least 400 total holders. Additionally, the company must meet at least one of the following three standards:

Equity standard. The company must maintain:

Stockholders' equity of at least US$10 million.

At least 750,000 publicly held shares.

Publicly held shares with a market value of at least US$5 million.

At least two registered and active market makers.

Market value standard. The company must have:

Listed securities with a market value of at least US$50 million

At least 1.1 million publicly held shares.

Publicly held shares with a market value of at least US$15 million.

At least four registered and active market makers.

Total assets/total revenue standard. The company must have:

Total assets and total revenue of at least US$50 million each for the most recently completed fiscal year or two of three of most recently completed fiscal years.

At least 1.1 million publicly held shares.

Publicly held shares with a market value of at least US$15 million.

At least four registered and active market makers.

In order to continue to list a preferred or secondary class of stock, alternate standards apply.

*Nasdaq Capital Market*

In order to list a primary equity security on the Nasdaq Capital Market (other than a listing in connection with a Direct Listing), the security must have:

At least 1 million unrestricted publicly held shares.

At least 300 holders of 100 or more shares, with at least 50% of them holding unrestricted securities with a market value of at least US$2,500 (SPACs are excluded from this requirement).

At least three registered and active market makers.

If the proposed listing is for ADRs, then at least 400,000 ADRs must be issued.

Additionally, the security and company must meet one of the following three standards:

Equity. The company must have:

A minimum bid price of US$4 per share or, alternatively, a closing price of US$3 per share if the company has (i) average annual revenues of at least US$6 million for the last three years, (ii) net tangible assets in excess of US$5 million if in continuous operation for less than three years or (iii) net tangible assets in excess of US$2 million and a three-year operating history.

Stockholder's equity of at least US$5 million.

Unrestricted publicly held shares with a market value of at least US$15 million.

A two-year operating history.

Market value of listed securities. The listed securities must have:

A minimum bid price of US$4 per share or, alternatively, a closing price of US$2 per share if the company has (i) average annual revenues of at least US$6 million for the last three years, (ii) net tangible assets in excess of US$5 million if in continuous operation for less than three years or (iii) net tangible assets in excess of US$2 million and a three-year operating history.

A market value of at least US$50 million.

Stockholders' equity of at least US$4 million.

Unrestricted publicly held shares with a market value of at least US$15 million.

Net income. The company must have:

A minimum bid price of US$4 per share or, alternatively, a closing price of US$3 per share if the company has (i) average annual revenues of at least US$6 million for the last three years, (ii) net tangible assets in excess of US$5 million if in continuous operation for less than three years or (iii) net tangible assets in excess of US$2 million and a three-year operating history.

Net income of US$750,000 from continuing operations in the most recent completed fiscal year or in two of the three most recent completed fiscal years.

Stockholders' equity of at least US$4 million.

Unrestricted publicly held shares with a market value of at least US$5 million.

In order to list other classes of common stock on the Nasdaq Capital Market, those other classes must meet the foregoing requirements. However, if the company already has a primary equity security listed on the Capital Market, the other class may meet a reduced set of requirements.

Additionally, as previously noted above, a company listing in connection with a Direct Listing has different financial and liquidity requirements it must meet, descriptions of which are beyond the scope of this note. A company that principally administers its business in a Restrictive Market will not be permitted to list on the Nasdaq Capital Market in connection with a Direct Listing.

Continued listing requirements. In order to continue to list on the Capital Market, the company must maintain:

At least two registered and active market makers.

A minimum bid price of at least US$1 per share.

At least 300 public holders.

At least 500,000 publicly held shares with a market value of at least US$1 million.

At least one of the following:

Stockholders' equity of at least US$2.5 million.

Market value of listed securities of at least US$35 million.

Net income of at least US$500,000 from continuing operations in the most recent completed fiscal year or in two of the three most recent completed fiscal years.

In order to continue to list additional classes of stock, a reduced set of requirements must be met.

*Continued Listing - Other Criteria*

Nasdaq may remove a company's listing for, among other things, violations of its listing agreement with the exchange, loss of its SEC registration for the listed securities, certain insolvency situations, failure to maintain a properly constituted audit committee and similar circumstances. Companies that fail to make their required SEC filings typically lose their listing in short order.

*Special Purpose Acquisition Companies*

Special Purpose Acquisition Company (SPAC) activity grew exponentially over the past few years, driven largely by activity in the US. Along with this was the follow-on growth in de-SPAC transactions, as publicly listed SPACs move through the transaction life cycle to merge with an acquisition target. See the Baker McKenzie Global SPACs Guide for more information on SPACs.

*Additional requirements for listing on any Nasdaq market*

In addition to the primary listing requirements discussed above, if the security is trading in the US over-the-counter market as of the date of the listing application and the listing is not in connection with a firm commitment underwritten offering of at least US$4 million, the security must have a minimum average daily trading volume of 2,000 shares (including trading volume of the underlying security on the primary market with respect to ADRs) over the 30 days prior to listing, with trading occurring on at least 16 of those days.

Domestic companies that list on Nasdaq are also required to comply with certain corporate governance requirements. However, a foreign private issuer may in general follow its home country corporate governance requirements instead of Nasdaq corporate governance requirements, with certain exceptions discussed in section 5 below.

A company seeking to list must be audited by an independent public accountant that is registered as a public accounting firm with the PCAOB.

A listed company must deposit its shares with a securities depository registered as a clearing agency (typically the Depository Trust Company). The security must also receive a CUSIP number from CUSIP Global Services or the foreign equivalent if it is an initial listing. This is a fairly simple administrative process.

There are no restrictions on the currency denomination of securities.

A company is not required to retain a compliance adviser in order to list its securities on Nasdaq.

# Listing documentation and process

## Listing documentation and process

[Last updated: 1 January 2024, unless otherwise noted]

In order to list on Nasdaq, a company must execute a listing agreement and a listing application. The company must also certify, at the time of listing, that all listing criteria have been satisfied.

The company must submit financial statements that are:

Prepared in accordance with US generally accepted accounting principles (GAAP).

Reconciled to US GAAP as required by the SEC's rules.

Prepared in accordance with International Financial Reporting Standards (IFRS), as issued by the International Accounting Standards Board (IASB).

All reports filed (or required to be filed) with the SEC or another regulatory authority must also be filed with Nasdaq in connection with the initial listing. While no interviews are typically necessary, Nasdaq may also request any public or non-public information it deems necessary to evaluate the company or security for meeting the initial listing criteria. The company must also submit additional Nasdaq forms.

A company that qualifies as a "foreign private issuer" receives special treatment under US securities laws. In order to be a foreign private issuer, the company:

Must be a foreign (non-US), non-governmental issuer.

Must have 50% or less of its outstanding voting securities directly or indirectly held of record by US residents—or, if over 50% of these securities are so held by US residents, must not:

Have a majority of its executive officers or directors who are US citizens or residents.

Have more than 50% of its assets located in the US.

Administer its business principally in the US.

A private company that does not qualify as a "foreign private issuer" under these criteria will generally be treated as a US domestic company, under the applicable SEC and Nasdaq criteria. The requirements applicable to such a company are outside the scope of this summary, as are the requirements applicable to a foreign private issuer that does not have securities registered or traded in the US.

A foreign private issuer that elects to follow home country practice in lieu of Nasdaq corporate governance rules (see section 5 below) must submit a written statement to Nasdaq from an independent counsel in the company's home country. The statement must certify that the company's practices are not prohibited by the home country's laws and, if the company is prohibited from complying with certain rules, state that fact as well.

In addition to the Nasdaq-related requirements for listing, a foreign private issuer must register the class of securities it intends to list with the SEC by filing a registration statement (Form 20-F). If a sale or offering is to be made in connection with the listing (for example, an IPO), the offering must be registered by filing a registration statement (typically on Form F-1 for an initial US listing), including a prospectus. The Form 20-F and Form F-1 require largely the same information.

The Form 20-F registration statement includes consolidated financial statements for the past three years, audited by an independent auditor and accompanied by an audit report. These consolidated financial statements must include:

A balance sheet.

Income statement/Statement of Comprehensive Income.

Statement of changes in equity.

Statement of cash flows.

Any related notes or schedules required by the accounting standards under which the statements were prepared.

Any audited financial statements included in a registration statement or annual report must be prepared in compliance with US GAAP or IFRS (as issued by IASB), or, if prepared in compliance with local GAAP (including any non-IASB IFRS), they must be reconciled to US GAAP.

If the statements are in compliance with IFRS, the compliance must be explicitly stated, and an auditor's certification to the same must be provided.

If the financial statements and schedules are prepared according to local GAAP, the material variations with US GAAP and SEC Regulation S-X must be disclosed.

The last year of the audited financial statements generally may not be older than 15 months at the time of listing, and, in the case of an IPO, may not be older than 12 months at the time the document is filed. Consolidated interim financial statements may have to be provided if the registration statement becomes effective more than nine months after the end of the last audited financial year.

A statement regarding capitalization and indebtedness must also be included in the registration statement. If the registration with the SEC and listing on Nasdaq is being made pursuant to an IPO, then financial information regarding proceeds and use of proceeds may also be required. If an issuer is registering debt securities, a ratio of earnings to fixed charges must also be provided.

These financial statement requirements may be difficult for non-US companies to comply with, because the US requirements are somewhat unique.

The Form 20-F or Form F-1, in addition to financial statements, must publicly disclose a variety of information, such as:

The company's business, property, legal proceedings and controlling shareholders.

The trading market for its shares.

Exchange controls and tax and other foreign governmental limitations affecting US shareholders.

Management's discussion and analysis of financial condition and results of operations.

Officers' and directors' background, compensation, management options and interests in transactions with the company.

Corporate governance policies and practices, disclosure controls and internal accounting controls as assessed by management.

Off-balance sheet arrangements, contractual obligations and contractual commitments.

Changes in the company's certifying accountant and ADR fees and payments.

Filings with the SEC must be made electronically through the SEC's electronic EDGAR system. Documents are publicly available as soon as they are filed. Under certain circumstances (for example, where an issuer is already listed on a non-US exchange or an issuer is seeking an initial listing both on a US and a non-US exchange), the SEC will permit a foreign private issuer to make its initial filing in paper form, on a draft confidential basis. In addition, an "emerging growth company" (as that term is defined in the US Jumpstart Our Business Startups Act (JOBS Act)), including one that is also a foreign private issuer, may make an initial filing of its registration statement to the SEC on a confidential basis. All amendments (including amendments responding to the SEC's comments on the initial confidential filing) must be publicly filed through the EDGAR system.

From the time the company decides to make a public offering in the US, through the SEC's confidential review process, the company must not engage in publicity for the offering or that may stimulate interest in the company or its securities. After the registration statement is filed publicly, but before the securities are all distributed to investors and final prospectuses delivered, the company must continue to restrict its public communications and use of offering-related materials.

The SEC will not declare the registration statement effective until FINRA clears the underwriting arrangements for any related public offering.

US domestic companies are also required to register their listed class of securities with the SEC. To register a class of securities other than in connection with a sale of securities, the issuer must file on Form 10. If a sale or offering is to be made in connection with the listing (such as an IPO), the offering must be registered by filing a registration statement (typically on Form S-1), including a prospectus. The Form 10 and Form S-1 require largely the same information. The Form S-1 is similar to the Form F-1 but generally requires more extensive disclosure regarding executive compensation and corporate governance practices. US domestic issuers are required to provide US GAAP audited financial statements and may not, at this time, report their financial results under IFRS.

*Timetable*

The following is a fairly typical process and timetable for a listing of a either a domestic or foreign private issuer on Nasdaq via underwritten public offering in the US.

[Link to Timetable](https://resourcehub.bakermckenzie.com/en/-/media/crossborder-listings-handbook/files/2020-update-8th-edition/nasdaqlisting-doc-and-proc.pdf)

# Continuing obligations/periodic reporting

## Continuing obligations/periodic reporting

[Last updated: 1 January 2024, unless otherwise noted]

A Nasdaq listed company is required to promptly disclose "any material information that would reasonably be expected to affect the value of its securities or influence investors' decisions." The disclosure may be made through any method that complies with the SEC's Regulation FD (Fair Disclosure), including a broadly disseminated press release.

If unusual market activity takes place in a company's Nasdaq-listed securities, the company should determine whether there is material information or news that should be disclosed. If activity or rumors indicate that information regarding important developments has been leaked or has become known to the investing public, the company may be required to make a public announcement. For example, the announcement may need to disclose negotiations, plans or even information that has not yet been presented to the company's board of directors. Occasionally, a company may have to deny false or inaccurate rumors that may affect the market activity in its securities. The MarketWatch department may, in some instances, determine that a trading halt is necessary until the information is properly disseminated.

Nasdaq must also be notified of various other changes affecting the listed company and its securities.

*Materials provided to shareholders*

The Nasdaq rules generally require that companies provide annual and quarterly reports and solicit proxies or voting instructions from their <st2:country-region>US</st2:country-region> shareholders, although a foreign private issuer is permitted to follow its home country practice instead. Materials distributed to shareholders by such foreign private issuers would also be furnished to the SEC under the cover of a Form 6-K, as discussed below.

*SEC periodic filings*

As long as a company continues to meet the definition of "foreign private issuer" described above, its required periodic reporting with the SEC is limited to:

Furnishing to the SEC, from time to time, by means of a simple cover page report known as the Form 6-K, copies of significant press releases, reports, and other disclosures that the issuer otherwise makes public as well as information on material cybersecurity incidents that the issuer discloses in a foreign jurisdiction to any stock exchange or securityholder.

Filing an annual report on Form 20-F, which includes new required disclosures on cybersecurity risk management and governance as well as new required disclosures regarding insider trading policies and procedures.

*Form 6-K*. A foreign private issuer must furnish a Form 6-K to the SEC from time to time. This is required by the SEC to report information that:

The company makes public pursuant to the law of its home country.

The company files with any non-US stock exchange on which its securities are listed and that is made public by the exchange.

The company distributes to its security holders.

This information could concern changes in management or control, acquisitions or dispositions of a material amount of assets, changes in the company's certifying accountants, the company's financial condition and results of operations, material legal proceedings, material cybersecurity incidents, or any other information that the company deems of importance.

*Interim financial statements.* Under Nasdaq rules, a foreign private issuer is required to publicly disclose its interim balance sheet and income statement as of the end of its second quarter by submitting such information on Form 6-K to the SEC. This information does not have to be reconciled to US GAAP.

*Form 20-F.* A listed company has financial reporting obligations under the <st2:country-region>US</st2:country-region> federal securities law. A foreign private issuer is required to file an annual report on Form 20-F with the SEC that includes audited financial statements. The Form 20-F is required to be filed within four months after the conclusion of the foreign private issuer's fiscal year. This report must be made available to shareholders through the company's website, and the company must state that holders of stock and bonds may receive a hard copy of the company's complete audited financial statements free of charge.

The financial statements required by the Form 20-F annual report are the same as those required under a Form 20-F registration statement, discussed above. They may be prepared in accordance with US GAAP, IFRS (as issued by IASB) or local GAAP. If the statements are in compliance with IFRS, the compliance must be explicitly stated, and an auditor's certification must be provided. If financial statements and schedules are prepared according to local GAAP, the principles must be disclosed and the material variations with US GAAP and SEC Regulation S-X must be discussed.

*For Domestic Issuers:*

Domestic issuers must file periodic and current reports on Form 10-K (annual reports), Form 10-Q (quarterly reports) and Form 8-K (current reports). The Form 10-K must include annual financial statements (prepared in conformity with US GAAP) along with information updating previously filed information regarding the issuer and its business. The Form 10-K must be filed within 90 days after the end of the fiscal year of the issuer or in a shorter period prescribed by regulation for certain larger reporting companies that are "accelerated filers". Quarterly reports containing unaudited quarterly financial information regarding the issuer must be filed within 45 days after the end of the fiscal quarter for the first three quarters of the year with shorter filing deadlines applying to accelerated filers. Current reports on Form 8-K are required for a variety of enumerated circumstances including *inter alia*, material acquisitions or dispositions, reporting of financial results (such as earnings releases) entering into material financing arrangements, changes to senior management and the board of directors, any change in the issuer's accounting firm, material cybersecurity incidents, and certain insolvency events. In most cases a Form 8-K is due within four business days of the prescribed event. Form 8-Ks are often typically filed or furnished by issuers to report other material developments that are not subject to mandatory disclosures.

Further, unlike foreign private issuers, domestic issuers are subject to the SEC's proxy statement regime which requires the filing with the SEC and distribution to shareholders of a lengthy mandated report in relation to any annual or special meetings of shareholders that contains certain mandated disclosures regarding the matters to be considered the meeting (such as the election of directors at an annual meeting). Most domestic issuers include their disclosures relating to executive compensation in their proxy statement for the issuer's annual meeting of shareholders. As a result of increased SEC and shareholder focus on compensation, the disclosures around executive compensation are very complex and lengthy.

*Sales and holdings by affiliates*

<st2:country-region>US</st2:country-region> securities laws limit the extent to which officers, directors and other control persons of a public company can sell their securities publicly in the US. Generally, in the absence of any available exemption (such as SEC Rule 144, which provides for resales subject to limitations on the quantity and timing) none of the principal officers or directors of a public company may sell their shares in the US market unless there is a registration statement then in effect, covering their shares. However, sales by officers and directors of a foreign private issuer of ordinary shares through ordinary brokerage transactions on most major non-US stock exchanges are unrestricted by US federal securities laws.

In addition, if a person or group of persons acting in concert acquires beneficial ownership of more than 5% of any registered class of voting equity securities, they will need to make a filing with the SEC on Form 13D or 13G. These filings also must be amended or updated from time to time. In October 2023, the SEC adopted amendments to Regulation 13D – G under the Exchange Act. For further discussion of the amendments, see our Client Alert:  [SEC issues new deadlines for Section 13 filings](https://insightplus.bakermckenzie.com/bm/capital-markets/united-states-sec-issues-new-deadlines-for-section-13-filings).

*Anti-fraud laws and insider trading*

SEC and stock exchange disclosure rules are intended to ensure that securities markets receive information regarding material events that might affect the trading prices of public company securities so that investors have adequate information available to them on a timely basis. These disclosures are subject to the antifraud provisions of US federal securities laws, including SEC Rule 10b-5. This rule makes it unlawful to engage in fraudulent or manipulative practices or "to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading."

These anti-fraud laws provide the basis for a significant amount of securities litigation, which is relatively prevalent in the US. As a result, public companies and their "insiders" (such as officers, directors and controlling persons) have potential liability if they fail to deal fairly with investors with respect to matters that could affect the price of the company's stock. A public company must have a policy of prompt and complete disclosure to stockholders and the financial community of all material developments, good or bad, that could reasonably be expected to influence the price of the company's stock. The company and its officers, directors and other insiders must refrain from all transactions in the company's securities during any period when there is undisclosed material information about the company. For this reason, most public companies have formal trading policies applicable to insiders. Similarly, the company should ensure that all material information is disseminated uniformly to the marketplace and must avoid activities designed to manipulate the company's stock price.

# Corporate governance

## Corporate governance

[Last updated: 1 January 2024, unless otherwise noted]

As mentioned above, a company listed on Nasdaq must comply with a broad set of corporate governance requirements set forth in the Nasdaq rules. Rather than being required to follow all of the corporate governance requirements that apply to domestic companies, a foreign private issuer may follow the corporate governance practice in its home country, except that it must:

Disclose publicly each requirement that it does not follow and describe the home country practice that it does follow.

Refrain from a disparate reduction or restriction of voting rights of common stockholders, subject to certain exceptions if not prohibited by home country law.

Provide a prompt notification if an executive officer of the company becomes aware of any noncompliance by the company of Nasdaq rules.

Have an audit committee that meets certain requirements, as discussed below.

Meet certain diversity requirements for the board of directors, or explain reasons for not doing so, and make certain annual disclosures under the Nasdaq Board Diversity Rule (see [Nasdaq Summary](https://listingcenter.nasdaq.com/assets/Foreign%20Issuers%20Listing%20on%20Nasdaq.pdf)).

A foreign private issuer seeking to follow home country practices in lieu of corporate governance practices ordinarily required by Nasdaq must submit to Nasdaq a written statement from independent counsel in the issuer's home country certifying that the issuer's practices are not prohibited by the home country's laws.

While the US has now added new requirements effectively mandating the use of compensation committees of independent directors for most listed issuers, foreign private issuers listed on Nasdaq may continue to follow home country practices in relation to executive compensation decisions as long as they describe how their practices diverge from US practices in their Form 20-F disclosures.

*Audit committee*

Under Nasdaq rules, a foreign private issuer must have an audit committee composed of at least three members who satisfy the independence requirements of SEC Rule 10A-3. This rule generally requires each member of the audit committee to be a member of the board of directors of the company, but otherwise independent of the company. With respect to non-investment company issuers, an audit committee member is considered independent if he or she does not accept directly or indirectly any consulting, advisory or other compensatory fee from the issuer or a subsidiary of the issuer (other than in the capacity of a member of an audit committee, the board of directors or any other board committee). Additionally, in order to be independent, the audit committee member may not be an affiliated person of the company or any subsidiary. In certain situations, exemptions from these requirements are available to foreign private issuers.

In the context of an IPO, at least one member of the audit committee must meet the independence requirement, and the others are exempt from the audit committee independence requirements for 90 days from the date of the effectiveness of the registration statement filed with the SEC. Additionally, less than half of the audit committee members are exempt from the independence requirements for a year from the date of effectiveness of the IPO registration statement.

Rule 10A-3 and the related Nasdaq rules also set out responsibilities of the audit committee relating to registered public accounting firms, procedures regarding complaints, engaging advisers and funding.

However, a foreign private issuer that already has a board of auditors (or similar body or statutory auditors) would be exempt from all or a portion of the audit committee requirements if certain conditions are met.

*Other SEC-imposed corporate governance requirements*

In addition to the corporate governance requirements outlined above, the SEC imposes a number of corporate governance requirements on all public companies (domestic and foreign). These include:

CEO/CFO certifications in the company's Form 20-F filed with the SEC.

Prohibitions on loans to executive officers.

Requirements that issuers review their relationships with their auditors to ensure continued independence.

Stringent rules requiring attorneys to report evidence of material violations.

Protection of whistleblowers.

Adoption and maintenance of a code of ethics for senior and financial officers.

Potential forfeiture of CEO and CFO bonuses or certain other types of compensation in the event of an accounting restatement, as well as additional new compensation clawback rules implemented in 2023 requiring the recovery of incentive-based compensation that is erroneously "received" by current and former executive officers for fiscal periods preceding the date of an accounting restatement (see our Client Alert:[SEC Releases Final Rule on Clawback of Incentive Compensation](https://insightplus.bakermckenzie.com/bm/attachment_dw.action?attkey=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQJsWJiCH2WAUuQVQjpl3o%2BQzUxecjEbFL&amp;nav=FRbANEucS95NMLRN47z%2BeeOgEFCt8EGQbuwypnpZjc4%3D&amp;attdocparam=pB7HEsg%2FZ312Bk8OIuOIH1c%2BY4beLEAeiCIukYeOcBk%3D&amp;fromContentView=1)).

*Other implications for corporate governance*

In addition to complying with its express obligations under the <st2:country-region>US</st2:country-region> securities laws, a foreign private issuer should also consider the following practical implications of becoming a public company in the US:

The company will be required to provide public disclosure about annual compensation (including non-cash compensation, such as stock options and other equity-based compensation) paid to executive officers and directors. This disclosure may generally be furnished on an aggregate, rather than an individual, basis.

Transactions with the company's stockholders, officers, directors and other affiliates must be carefully scrutinized for fairness and appropriately approved. Public disclosure of these transactions may be required.

The company must publicly disclose information about material on-going litigation, which may make it more difficult to conduct or settle the litigation on a favorable basis.

Material information about the company that is not yet disclosed to the public should be restricted to a small group on a "need-to-know" basis.

Clear lines of communication must be established for dealing with analysts and others interested in the company's financial affairs.

Review of all public disclosures must be centralized.

Officers and directors must be fully informed with respect to their responsibilities and potential liabilities. Indemnification of officers and directors and the availability of directors' and officers' liability insurance coverage will be of concern, particularly to outside directors.

Officers, directors and other affiliates must be sensitive to the timing of sales and purchases of the company's securities. Procedures must be implemented to monitor transactions in the company's securities, including assistance to officers and directors in filing reports and effecting sales of securities.

Routine corporate actions must be subject to formal procedures and timetables, including advance schedules for director and stockholder meetings and other corporate actions.

# Specific situations

## Specific situations

[Last updated: 1 January 2024, unless otherwise noted]

There are no additional Nasdaq requirements that apply to very large multinational companies or smaller companies nor to companies in particular industries (other than investment companies, which are outside the scope of this summary). SEC disclosure and other requirements may vary for companies in specialized industries (such as oil and gas companies, investment companies and financial companies). For example, the SEC adopted special disclosure rules for all listed companies (foreign and domestic) requiring an annual specialized disclosure report on Form SD if “conflict minerals” (as defined within the rules) are contained in products a company manufactures or contracts to be manufactured and necessary to the functionality of those products or their production processes and also adopted special disclosure rules for all listed companies (foreign and domestic) requiring resource extraction issuers to disclose payments to governments related to the commercial development of oil, natural gas or minerals, reportable through report on Form SD. Most recently, the SEC adopted new rules for all listed companies (foreign and domestic) requiring disclosure of material cybersecurity incidents and certain other cybersecurity related disclosures as well as new rules requiring certain disclosures about an issuer's insider trading policies and procedures.

No explicit procedure currently exists for fast track or expedited listing, but the process may be expedited with Nasdaq if scheduling and timing permit. Most companies find that the SEC registration process is more time-consuming than the Nasdaq listing process.

# Presence in the jurisdiction

## Presence in the jurisdiction

[Last updated: 1 January 2024, unless otherwise noted]

Nasdaq does not impose any requirements for a listed foreign company to maintain a presence in the US or keep any original records there. However, US laws require public companies to keep reasonable records and to devise an adequate system of internal accounting for the protection of assets. A public company should establish procedures and consult with its auditors to ensure that its compliance systems and its auditors' accounting systems are adequate to meet these requirements.

# Fees

## Fees

[Last updated: 1 January 2024, unless otherwise noted]

*Entry fees*

A company seeking to list on Nasdaq must pay an entry fee, a portion of which constitutes a non-refundable application fee.

*Nasdaq Global Select and Global Markets*. Entry fees are a flat fee of US$295,000, which includes an application fee of US$25,000.

*Nasdaq Capital Market*. The entry fee ranges from US$50,000 to US$75,000 depending on the number of outstanding shares and includes an application fee of US$5,000.

The entry fee on any Nasdaq tier for a SPAC is US$80,000, which includes a US$5,000 application fee.

*Annual fees*

All Nasdaq-listed companies are subject to Nasdaq’s all-inclusive fee program. Under the all-inclusive fee program, companies pay a single annual fee to Nasdaq that covers all the ordinary costs of listing for the year but still have to pay separate fees for any review of a delisting determination or the listing of new classes of securities. The program therefore  eliminates transactional fees related to the issuance of additional shares of an already listed class, record-keeping changes, substitution listing events and for requests for written interpretation of Nasdaq's listing rules.

The all-inclusive annual fee for equity securities is calculated based on total shares outstanding or ADRs listed. For companies listed on the Nasdaq Global Market or Nasdaq Global Select Market, the amount of the all-inclusive annual fee ranges from:

US$52,500 to US$182,500 for companies other than ADR issuers.

US$52,500 to US$94,000 for ADR issuers.

For companies listed on the Nasdaq Capital Market, the amount of the all-inclusive annual fee ranges from:

US$49,500 to US$85,000 for companies other than ADR issuers.

US$49,500 to US$59,500 for ADR issuers.

The all-inclusive annual fee for a SPAC on any tier is US$81,000.

*Other situations*

Other fees and exceptions are applicable to convertible debt securities, to companies that already have another class of securities listed on Nasdaq or the NYSE, to subsequent issuances of additional securities and to a company that makes certain changes to its name or securities after listing.

Additional costs include printing expenses and registration fees with the SEC, as well as legal and accounting fees.

# Additional Information

## Additional Information

[Last updated: 1 January 2024, unless otherwise noted]

All information for registration with the Nasdaq and the SEC should be submitted in the English language.

*Key differences in requirements for domestic companies*

As highlighted above, there are important differences between the requirements for domestic and foreign companies looking to register their securities with the SEC and list with Nasdaq. The key differences in requirements between US companies and foreign private issuers listing on the Nasdaq markets relate mainly to corporate governance and continuing disclosure obligations. US companies are subject to certain corporate governance and disclosure obligations that foreign private issuers are not, including the following.

US companies must file with the SEC current, quarterly and annual reports on Forms 8-K, 10-Q and 10-K, respectively, while foreign private issuers are required to furnish the SEC with Forms 6-K (with respect to information released in their home markets or to their shareholders) and file with the SEC an annual report on Form 20-F. The disclosure obligations for foreign private issuers in Form 20-F are somewhat less demanding than those for US companies in Form 10-K.

Foreign private issuers are not required to follow US rules covering the solicitation of proxies for annual or special meetings of shareholders, which require US companies to file with the SEC (and provide to their shareholders) proxy statements containing detailed information on the matters to be considered at the meeting and the compensation of individual executive officers and directors. Foreign private issuers are required to provide only aggregate information on compensation of executive officers and directors when filing their annual reports on Form 20-F.

Executive officers, directors and holders of 10% of the outstanding shares of US companies are subject to insider trade reporting on Form 3 (initial ownership report) and Form 4 (changes in beneficial ownership) and short-swing profit disgorgement requirements pursuant to Section 16 of the Exchange Act, while foreign private issuers and their executive officers, directors and shareholders are not.

Foreign private issuers generally may follow home country practices in relation to corporate governance, rather than following the rules that apply to US companies. Foreign private issuers are, however, subject to certain disclosure obligations when doing so, which are further described in section 5 above. Domestic issuers, however, are subject to additional governance requirements relating to the composition of audit, compensation and nominating committee, codes of ethics, and trading blackouts relating to benefit plans, descriptions of which are beyond the scope of this note.

The quantitative standards for initial and continued listing on the Nasdaq markets (that is, revenue, income, share price) are the same for domestic issuers and foreign private issuers, and are further described in section 2 above.

# Contacts

## Contacts within Baker McKenzie

The most appropriate contacts within Baker McKenzie for inquiries about prospective listings on Nasdaq are as follows:

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