Cross-Border Listings Guide - Nasdaq

Principal listing and maintenance requirements and procedures

| Contents |
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| To generate table of contents, right-click here and select **Update Field.** |

# 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.

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