Cross-Border Listings Guide - New York Stock Exchange

Principal listing and maintenance requirements and procedures

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# Principal listing and maintenance requirements and procedures

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The NYSE allows "foreign private issuers" (a term of art under US securities laws, described further below) to qualify for listing either under the domestic listing criteria or under the alternate listing standards for foreign private issuers. The alternate listing standards allow more flexibility because they do not have the same minimum distribution requirements for securities in the US and North America. The alternate listing standards are only available if there is a broad liquid market for the company's shares in its country of origin and are designed to encourage major non-U.S. companies to list their shares on the NYSE.

Under both standards, an operating history of three years is required for a company to list on the NYSE. The NYSE will consider allowing a joint history, if a company without the requisite history is acquiring a company that has the required history.

*Domestic standards (general NYSE standards)*

In order to list under general NYSE standards, a company must satisfy minimum distribution requirements, market value requirements and financial standards. Shares held by directors, officers, or their immediate family members and other concentrated holdings of 10% or more are excluded in calculating the number of publicly held shares and market value of publicly held shares noted below.

***Distribution***. A company seeking to list existing securities or transfer to the NYSE must have at least 1.1 million publicly held shares and meet one of the following three criteria:

Have at least 400 holders of 100 shares or more and an average monthly trading volume of at least 100,000 shares for the most recent six months.

Have at least 2,200 total shareholders and an average monthly trading volume of at least 100,000 shares for the most recent six months.

Have at least 500 total shareholders, with an average monthly trading volume of at least 1 million shares for the most recent 12 months.

A company seeking to list in connection with its initial public offering (IPO), must have at least 400 holders of 100 shares or more and at least 1.1 million publicly held shares.

***Market value***. The aggregate market value of publicly held shares must be at least US$40 million for IPO companies, or US$100 million for companies seeking to list their existing securities or to transfer to NYSE. Additionally, the shares must have a closing price (or, if listing in connection with an IPO, an offering price) of at least US$4 per share at the time of listing.

***Financial***. The issuer must meet one of the following two financial standards tests:

*Earnings tests*

*Standard earnings test*. Pre-tax earnings from continuing operations and after minority interest, amortization and equity in the earnings or losses of investees, must total (i) at least US$10 million in the aggregate for the last three fiscal years together with a minimum of US$2 million in each of the two most recent fiscal years, and positive amounts in all three years or (ii) at least US$12 million in the aggregate for the last three fiscal years together with a minimum of US$5 million in the most recent fiscal year and US$2 million in the next most recent fiscal year.

*Alternative for emerging growth companies*. An "emerging growth company" (as that term is defined in the US Jumpstart Our Business Startups Act (JOBS Act)) that avails itself of certain provisions under the US securities laws allowing the company to report only two years of audited financial statements can qualify under the earnings test if its pre-tax earnings from continuing operations and after minority interest, amortization and equity in the earnings or losses of investees (as adjusted) total at least US$10 million in the aggregate for the last two fiscal years together with a minimum of $2 million in each year.

*Global market capitalization test*

At least US$200 million in global market capitalization (public shares). Existing public companies must meet the minimum global market capitalization for a minimum of 90 consecutive trading days prior to receipt of clearance to make application to list.

***Note***—In the case of companies listing in connection with an IPO, the companies' underwriter must provide a written representation that demonstrates the issuer's ability to meet the global market capitalization requirement based upon the completion of the offering.

***Primary Direct Floor Listings.*** NYSE rules allow a company to sell shares on its own behalf in connection with its initial listing upon effectiveness of a registration statement, without a traditional underwritten public offering. A company that has not previously had its common equity securities registered may list its common equity securities on NYSE at the time of effectiveness of a registration statement pursuant to which the company will sell shares in the opening auction on the first day of trading on NYSE, referred to as a "Primary Direct Floor Listing." Companies that sell at least US$100 million in market value of shares in the direct listing auction will meet the applicable aggregate market share requirement for such listings. Alternatively, if a company is selling less than US$100 million in the auction, it will qualify if the aggregate market value of publicly held shares prior to listing, together with the market value of the shares sold by the company in the direct listing auction, is at least US$250 million.

***Alternate listing standards for foreign private issuers.*** 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 foreign private issuer may elect to qualify for listing on the NYSE under either: (i) the following alternate listing standards, or (ii) the domestic standards described above.

In order to list under the alternate listing standards, a foreign private issuer must satisfy certain minimum distribution requirements, market value requirements and financial standards. Shares held by directors, officers, or their immediate family members and other concentrated holdings of 10% or more are excluded in calculating the number of publicly held shares and market value of publicly held shares noted below.

*Distribution*. The company must have worldwide at least 5,000 holders of 100 shares or more and at least 2.5 million publicly held shares.

*Market value*. The aggregate worldwide market value of the publicly held shares must be at least US$100 million (US$60 million in the case of companies that have a parent or affiliate that is NYSE listed and in good standing with the NYSE ("controlled companies")). Additionally, the shares must have a closing price (or, if listing in connection with an IPO, an offering price) of at least US$4 per share at the time of listing.

*Financial*. The issuer must meet one of the following sets of financial standards:

*Earnings tests*

*Standard earnings test*. The pre-tax earnings (from continuing operations and after minority interest, amortization and equity in the earnings or losses of investees, subject to certain adjustments) of the foreign private issuer must be at least US$100 million in the aggregate for the last three fiscal years, including a minimum of US$25 million in each of the most recent two fiscal years.

*Alternative for emerging growth companies*. An "emerging growth company" (as that term is defined in the JOBS Act) that avails itself of certain provisions under the US securities laws allowing the company to report only two years of audited financial statements can qualify under the earnings test if its pre-tax earnings from continuing operations and after minority interest, amortization and equity in the earnings or losses of investees (as adjusted) total at least US$100 million in the aggregate for the last two fiscal years together with a minimum of $25 million in each year.

*Valuation/revenue tests*

*Valuation/revenue with cash flow test*. At least US$500 million in global market capitalization, at least US$100 million in revenues during the most recent 12-month period, and at least US$100 million in the aggregate cash flows for the last three fiscal years including at least US$25 million in each of the two most recent fiscal years (subject to certain adjustments).

*Pure valuation/revenue test*. At least US$750 million in global market capitalization (six-month average) and at least US$75 million in revenues during the most recent fiscal year.

*Alternative for emerging growth companies*. An "emerging growth company" (as that term is defined in the JOBS Act) that avails itself of certain provisions under the US securities laws allowing the company to report only two years of audited financial statements can qualify under the valuation/revenue tests if it has at least US$500 million in global market capitalization, at least US$100 million in revenues during the most recent 12-month period, and at least US$100 million aggregate cash flows for the last two fiscal years with at least US$25 million in each year (subject to certain adjustments).

*Alternative for Controlled Companies.* At least US$500 million in global market capitalization, at least 12 months of operating history, the company's parent or affiliated company is a listed company in good standing, and the company's parent or affiliated company retains control of the entity or is under common control with the entity.

***Note***—In the case of companies listing in connection with an IPO, the companies' underwriter must provide a written representation that demonstrates the issuer's ability to meet the global market capitalization requirement based upon the completion of the offering.

*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*](https://whem.bakerworld.com/global/knowhow-whem/Global/_layouts/15/DocIdRedir.aspx?ID=J7JR74QVTEMV-37-1132) for more information on SPACs.

*Other requirements of listing and special situations*

In addition to meeting NYSE requirements, a listing company must register its securities with the SEC before admission to dealings on the NYSE. As discussed further below, this registration is a significant undertaking.

In order to list on the NYSE, a foreign private issuer must comply with certain corporate governance standards set out in the NYSE's listed company manual (see section 5 below). A domestic company is subject to a variety of additional corporate governance standards and distribution requirements for shares in the US and North America.

In order to be listed, the shares must also receive a CUSIP number from CUSIP Global Services. This is a fairly simple administrative process.

The NYSE also requires that the company have a designated market maker. The company may either select an eligible designated market maker as part of its listing application or delegate authority to the NYSE to select an eligible designated market maker. The NYSE will provide the company with a list of eligible designated market makers, along with contact information and market performance information.

If a company with bearer shares has difficulty demonstrating its number of shareholders worldwide, it may request to be sponsored by a NYSE member firm that would ensure the company has adequate liquidity and depth of market for its shares.

In addition, in order to list American Depositary Receipts or Shares (ADRs) on the NYSE, the ADRs must be sponsored. A foreign private issuer can obtain a sponsor by entering into a depository agreement with a US depository bank. Under the agreement, the bank agrees to provide services such as cash and stock dividend payments, transfer of ownership and distribution of relevant materials such as notices and shareholder meeting materials.

No interview with the NYSE is typically required in order to list securities.

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 the NYSE.

*Continued listing standards*

In order to maintain its listing on the NYSE, a company must maintain minimum distribution levels, minimum financial standards and a minimum price. If these criteria are not met, a listed company may be the target of suspension and delisting procedures.

*Distribution*. The NYSE will give consideration to the prompt initiation of suspension and delisting procedures with respect to a security of either a domestic or non-US issuer when:

The number of total stockholders is less than 400 (includes beneficial owners holding through NYSE member brokers); or

The number of publicly-held shares is less than 600,000 (that is, shares held by non-affiliated parties); or

The number of total stockholders is less than 1,200 (includes beneficial owners holding through NYSE member brokers) and average monthly trading volume for the most recent twelve months is less than 100,000 shares.

***Note***— Shares held by directors, officers, or their immediate families and other concentrated holdings of 10% or more are excluded in calculating the number of publicly held shares.

*Financial*. An issuer will not be in compliance with the required minimum continuing financial standards and will be eligible to be delisted or suspended from the NYSE if:

Its average global market capitalization over a consecutive 30 trading-day period is less than US$50 million.

At the same time, total stockholders' equity is less than US$50 million.

***Note***—The NYSE will initiate suspension and delisting if a company is determined to have an average global market capitalization of less than US$15 million throughout a consecutive 30 trading-day period, regardless of the standard under which it initially listed.

Further if a company is initially listed under any of the NYSE's financial standards on the basis of financial statements covering a period of 9 to 12 months and the issuer does not qualify under the regular standard at the end of such fiscal year or qualify at such time for original listing under another listing standard, the NYSE will promptly initiate suspension and delisting procedures with respect to the issuer.

*Price criteria for continuing listing:*

A company will be considered to be below compliance standards and accordingly may be subject to suspension and delisting if the average closing price of its listed security is less than US$1 over a consecutive 30 trading-day period.

A company generally has six months to bring its share price and average share price back above US$1 but must notify the NYSE, within 10 business days of receipt of the notification, of its intent to cure the deficiency.

A failure to satisfy the minimum price requirement will be deemed cured if the price promptly exceeds US$1 per share, and the price remains above US$1 per share for at least the following 30 trading days.

*Certain other criteria*. The NYSE may also 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.

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