

ALERTS

SEC Approves NYSE's Amended Stockholder Approval Rules Providing Companies With Increased Flexibility to Raise Capital From Passive Related Parties

January 9, 2024

On Dec. 26, 2023, the US Securities and Exchange Commission approved, on an accelerated basis, an amended proposal by the NYSE to amend certain of its stockholder approval rules to limit the applicability of stockholder approval rules on sales of securities to passive Related Parties. Prior to this change, any issuance to a Related Party over one percent required stockholder approval. Now, only issuances to Active Related Parties (as defined below) over one percent require such approval, subject to compliance with any other rule requiring stockholder approval.

Rule 312.03(b) — As amended, the Related Party Stockholder Approval Rule provides that:

- Shareholder approval is no longer required for issuances to substantial security holders (i.e. holders of five percent of company's stock or voting power) that are not Active Related Parties (as defined below).
- An "Active Related Party" is a director, officer, controlling shareholder or member of a control group^[1] or any other substantial security holder of the company that has an affiliated person who is an officer or director of the company.

For purposes of 312.03(b)(ii), the definition of “Related Party” remains unchanged and any listed company selling securities in a private placement below the Minimum Price (as defined in Section 312.03(c)), including a sale to a passive Related Party, will remain subject to the shareholder approval requirement of Section 312.03(c) if such transaction relates to 20 percent or more of the issuer’s common stock. In addition, any issuance to a Related Party would still be subject to stockholder approval under any other applicable rule, such as in connection with a change of control.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] As amended, “group” will mean a group as determined under Section 13(d)(3) or Section 13(g)(3) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) and “control” will have the same meaning as defined in Rule 12b-2 of Regulation 12B under the Exchange Act.

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