Update: NASDAQ Proposed Listing Rule Change

What is the new Rule?

NASDAQ has recently proposed a new change on how issuers list on their exchange. This rule has not yet been approved and is currently open for comments at the SEC until January 21st. The proposal is a to change rule 5405 and 5505 on the minimum market value of unrestricted publicly held shares. The new rule would require that the minimum value of unrestricted free trading shares be met solely from proceeds of an offering. NASDAQ has called out that this rule change would also apply to issuers uplisting from OTC.

In effect, this new rule would be setting minimum raise requirements for new issuers. The minimum raise requirement will be dependent on the listing standard. If a new issuer has net income over $750,000 either in the latest fiscal year or in two of the last three fiscal years, then the minimum raise will need to be $5 million. For all other issuers the minimum raise would now be set at $15 million on NASDAQ Capital Markets.

Why has NASDAQ proposed such a rule change?

Under the current rule, issuers can include shares of non-director and officers and less than 10% shareholders towards the minimum market value of unrestricted shares. NASDAQ states that they have seen increased volatility for companies which are using these shareholders to meet the minimum market value requirements. Due to the observed volatility for many of those issuers, NASDAQ has proposed to eliminate their ability to list without a larger raise at IPO/uplisting.

What does this mean?

Practically this means two things:

1) Many earlier stage companies will no longer be able to list on NASDAQ
2) Small investors will not be able to invest in earlier stage companies

Looking at the market, the majority of companies using this rule, have not been able to raise $15million on an IPO/uplisting. As a result, these companies will be shutout from the exchanges, eliminating a crucial capital source required to achieve the growth desired by the exchanges, their current investors, and those that wish to invest. If these companies are no longer available on exchange, smaller investors who generally are not able to participate in private equity, will no longer be able to participate in this sector of the market.

ARC Group will continue to monitor the status of this proposed rule change and the regulatory environment in general. We are preparing appropriate strategies for our client base whatever the outcome and will ensure capital is available to our clients at critical points in their development.

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