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NYSE Listed Company Manual

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312.03 Shareholder Approval

Shareholder approval is a prerequisite to issuing securities in the following situations:

(a) Shareholder approval is required for equity compensation plans. See Section 303A.08.

(b) (i) Shareholder approval is required prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, in any transaction or series of related transactions, to[

(1)] a director, officer or substantial security holder of the company (each a "Related Party");

(2) a subsidiary, affiliate or other closely-related person of a Related Party; or

(3) any company or entity in which a Related Party has a substantial direct or indirect interest;]

if

such transaction is a cash sale for a price that is less than the Minimum Price, and the number of shares of common stock to be issued, or if the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either one percent of the number of shares of common stock or one percent of the voting power outstanding before the issuance.

[However, if the Related Party involved in the transaction is classified as such solely because such person is a substantial security holder, and if the issuance relates to a sale of stock for cash at a price at least as great as the Minimum Price, then shareholder approval will not be required unless the number of shares of common stock to be issued, or unless the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either five percent of the number of shares of common stock or five percent of the voting power outstanding before the issuance.

In addition, the provisions of this Section 312.03(b) will not apply to the sale of stock for cash by an Early Stage Company to (i) a Related Party, (ii) a subsidiary, affiliate or other closely-related person of a Related Party; or (iii) any company or entity in which a Related Party has a substantial direct or indirect interest, provided that the Early Stage Company's audit committee or a comparable committee comprised solely of independent directors reviews and approves of all such transactions prior to their completion.]

(ii) Shareholder approval is also required prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, where such securities are issued as consideration in a transaction or series of related transactions in which a Related Party has a five percent or greater interest (or such persons collectively have a ten percent or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into common stock, could result in an issuance that exceeds either five percent of the number of shares of common stock or five percent of the voting power outstanding before the issuance.

[The exemption in the preceding paragraph will not be applicable to a sale of securities by the listed company to any person subject to the provisions of this Section 312.03(b) in a transaction, or series of transactions, whose proceeds will be used to fund an acquisition of stock or assets of another company where such person has a direct or indirect interest in the company or assets to be acquired or in the consideration to be paid for such acquisition.

The] (iii) Any sale of stock to [a Related Party that is] an employee, director or service provider is also subject to the equity compensation rules in Section 303A.08 of the Manual. For example, a sale of stock [by an Early Stage Company] to any of such parties at a discount to the then market price would be treated as equity compensation under Section 303A.08 notwithstanding [the exemption from] that shareholder approval [provided] may not be required under Sections 312.03(b) or 312.03(c). Consequently, the company would be required to either: (i) obtain shareholder approval of such sale, or (ii) issue such shares under an equity compensation plan that had previously been approved by shareholders and for which shareholder approval under Section 303A.08 is not otherwise required. Moreover, shareholder approval is required if any of the subparagraphs of Section 312.03 require such approval, notwithstanding the fact that the transaction does not require approval under this subparagraph or one or more of the other subparagraphs. (See Section 312.04(a).)

(c) Shareholder approval is required prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, in any transaction or series of related transactions if:

- (1) the common stock has, or will have upon issuance, voting power equal to or in excess of 20 percent of the voting power outstanding before the issuance of such stock or of securities convertible into or exercisable for common stock; or
- (2) the number of shares of common stock to be issued is, or will be upon issuance, equal to or in excess of 20 percent of the number of shares of common stock outstanding before the issuance of the common stock or of securities convertible into or exercisable for common stock.

However, shareholder approval will not be required for any such issuance involving:

•any public offering for cash; or

• any [bona fide private] other financing (that is not a public offering for cash) in which the company is selling securities for cash, if such financing involves a sale of[:•] common stock, or securities convertible into or exercisable for common stock, [for cash,] at a price at least as great as the Minimum Price [: or • securities convertible into or exercisable for common stock, for cash, if the conversion or exercise price is at least as great as the Minimum Price] , provided that if any of the proceeds of such financing will be paid in an acquisition and the securities generating such proceeds when combined with any securities issued in connection with such acquisition exceed either 20 percent of the number of shares of common stock or 20 percent of the voting power outstanding before the issuance, then shareholder approval is required.

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[312.03T Temporary COVID-19 Exception

(a) This Section 312.03T is operative until, and including, June 30, 2020. To rely on this rule, the company must submit the related supplemental listing application and certification pursuant to Section 312.03T(b)(5)(A) below and obtain the Exchange's approval of its utilization of the exception pursuant to Section 312.03T(b)(5)(B) below and thereafter sign a binding agreement no later than June 30, 2020. The issuance of the securities governed by such agreement may occur after June 30, 2020, provided the issuance takes place no later than 30 calendar days following the date of the binding agreement.

(b) Notwithstanding the requirements of Section 312.03(c), a listed company may issue securities without shareholder approval upon approval by the Exchange of an application demonstrating that the transaction satisfies the following requirements:

1. the need for the transaction is due to circumstances related to COVID-19 and the proceeds will not be used to fund any acquisition transaction;
2. the delay in securing shareholder approval would: (A) have a material adverse impact on the company's ability to maintain operations under its pre-COVID-19 business plan; (B) result in workforce reductions; (C) adversely impact the company's ability to undertake new initiatives in response to COVID-19; or (D) seriously jeopardize the financial viability of the enterprise;
3. the company undertook a process designed to ensure that the proposed transaction represents the best terms available to the company;
4. the company's audit committee or a comparable committee comprised solely of independent, disinterested directors (A) expressly approved reliance on this

exception; and (B) determined that the transaction is in the best interest of shareholders.

5. (A) The company must submit a supplemental listing application as required by Section 703.01(part one)(A) in relation to the applicable transaction along with a certification to the Exchange that it complies with all requirements of this Section 312.03T(b) (and Section 312.03T(c) if applicable) and describing with specificity how it complies; (B) The Exchange must approve all transactions in advance of any issuance of securities in reliance on this Section 312.03T. Such approval of a company's reliance on this exception will be based on a review of whether the company has established that it complies with the requirements of Section 312.03T(b) (and Section 312.03T(c) if applicable).

(c) A transaction described in Section 312.03T(b) will not require shareholder approval under Section 312.03(b) or Sections 312.03(a) and 303A.08, provided that the transaction satisfies the following requirements:

1. any participation by a Related Party or other person who is subject to Section 312.03(b) or Section 303A.08 (an "Affiliated Purchaser") must be less than 5% of the transaction;
2. the participation of all Affiliated Purchasers collectively must be less than 10% of the transaction;
3. the participation of any Affiliated Purchaser must have been specifically required by unaffiliated investors; and
4. the Affiliated Purchasers must not have participated in negotiating the economic terms of the transaction.

(d) A company that relies on the exception in this Section 312.03T must make a public announcement by filing a Form 8-K, where required by SEC rules, or by issuing a press release as promptly as possible, but no later than two business days before the issuance of the securities, disclosing:

1. the terms of the transaction (including the number of shares of common stock that could be issued and the consideration received);
2. that shareholder approval would ordinarily be required under Exchange rules but for the fact that the company is relying on this temporary exception to the shareholder approval rules; and

3. that the audit committee or a comparable committee comprised solely of independent, disinterested directors expressly approved reliance on the exception and determined that the transaction is in the best interest of shareholders.

(e) Issuances pursuant to this Section 312.03T must comply with all other requirements of applicable Exchange rules, except as provided for herein.

(f) Other than a public offering for cash, securities issued in reliance on the exception in this Section 312.03T will be aggregated with any subsequent issuance at a discount to the Minimum Price if the binding agreement governing the subsequent issuance is executed within 90 days of the prior issuance. If, following the subsequent issuance, the aggregate issuance (including shares issued in reliance on the exception) equals or exceeds 20% of the total shares or the voting power outstanding before the initial issuance, then shareholder approval will be required under Section 312.03(c) prior to the subsequent issuance.]

312.04 For the Purpose of Section 312.03

For the purpose of Section 312.03:

(a) Shareholder approval is required if any of the subparagraphs of Section 312.03 require such approval, notwithstanding the fact that the transaction does not require approval under one or more of the other subparagraphs.

(b) Pursuant to Sections 312.03 (b) and (c), shareholder approval is required for the issuance of securities convertible into or exercisable for common stock if the stock that can be issued upon conversion or exercise exceeds the applicable percentages. This is the case even if such convertible or exchangeable securities are not to be listed on the Exchange.

(c) The Exchange's policy regarding the need to apply to list common stock reserved for issuance on the conversion or the exercise of other securities is described in Section 703.07.

(d) Only shares actually issued and outstanding (excluding treasury shares or shares held by a subsidiary) are to be used in making any calculation provided for in Sections 312.03 (b) and (c). Shares reserved for issuance upon conversion of securities or upon exercise of options or warrants will not be regarded as outstanding.

(e) An interest consisting of less than either five percent of the number of shares of common stock or five percent of the voting power outstanding of a company or entity shall not be considered a substantial interest or cause the holder of such an interest to be regarded as a substantial security holder.

(f) "Voting power outstanding" refers to the aggregate number of votes that may be cast by holders of those securities outstanding that entitle the holders thereof to vote generally on all matters submitted to the company's security holders for a vote.

(g) ["Bona fide private financing" refers to a sale in which either:

- a registered broker-dealer purchases the securities from the issuer with a view to the private sale of such securities to one or more purchasers; or

- the issuer sells the securities to multiple purchasers, and no one such purchaser, or group of related purchasers, acquires, or has the right to acquire upon exercise or conversion of the securities, more than five percent of the shares of the issuer's common stock or more than five percent of the issuer's voting power before the sale.

h)] "Officer" has the same meaning as defined by the Securities and Exchange Commission in Rule 16a-1(f) under the Securities Exchange Act of 1934, or any successor rule.

(i)h) "Minimum Price" means a price that is the lower of: (i) the Official Closing Price immediately preceding the signing of the binding agreement; or (ii) the average Official Closing Price for the five trading days immediately preceding the signing of the binding agreement.

(j)j) "Official Closing Price" of the issuer's common stock means the official closing price on the Exchange as reported to the Consolidated Tape immediately preceding the signing of a binding agreement to issue the securities. For example, if the transaction is signed after the close of the regular session at 4:00 pm Eastern Standard Time on a Tuesday, then Tuesday's official closing price is used. If the transaction is signed at any time between the close of the regular session on Monday and the close of the regular session on Tuesday, then Monday's official closing price is used.

(k)j) The issuance of shares from treasury is considered an issuance of shares for purposes of Section 312.03. (See Section 703.01, Part 1, of the Listed Company Manual regarding required notice to the Exchange of issuance of shares from treasury.)

(l) "Early Stage Company" means a company that has not reported revenues greater than \$20 million in any two consecutive fiscal years since its incorporation and any Early Stage Company will lose that designation at any time after listing on the Exchange that it files an annual report with the SEC in which it reports two consecutive fiscal years in which it has revenues greater than \$20 million in each year.]

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314.00 Related Party Transactions

[Related party transactions normally include transactions between officers, directors, and principal shareholders and the company. Each related party transaction is to be reviewed and evaluated by an appropriate group within the listed company involved. While the Exchange does not specify who should review related party transactions, the Exchange believes that the Audit Committee or another comparable body might be considered as an appropriate forum for this task. Following the review, the company should determine whether or not a particular relationship serves the best interests of the company and its shareholders and whether the relationship should be continued or eliminated.] A company's audit committee or another independent body of the board of directors, shall conduct a reasonable review and oversight of all related party transactions for potential conflicts of interest and may prohibit such a transaction if it determines it to be inconsistent with the interests of the company. For purposes of this rule, the term "related party transaction" refers to transactions required to be disclosed pursuant to Item 404 of

Regulation S-K under the Securities Exchange Act. In the case of foreign private issuers, the term "related party transactions" refers to transactions required to be disclosed pursuant to Form 20-F, Item 7.B.

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