

Direct Listing of Securities: Going Public Without an IPO

Registration Requirements, New NYSE Valuation Criteria, Pros and Cons, Lessons From Spotify

WEDNESDAY, MAY 23, 2018

1pm Eastern | 12pm Central | 11am Mountain | 10am Pacific

Today's faculty features:

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SPOTIFY'S DIRECT LISTING ON NYSE



MAY 23, 2018

TODAY'S PRESENTERS



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AGENDA

1. Spotify's Recent Direct Listing – A Case Study
 - Timeline and SEC filings
 - Key terms from the Registration Statement on Form F-1
 - Was it a success?
2. NYSE Listing Requirements
 - General requirements
 - History of Section 102.01 (B) Footnote (E) of the NYSE Listed Company Manual – the so-called “Spotify Rule”
 - Analysis of Footnote (E) and related NYSE Rules

AGENDA

4. Advantages of Direct Listing
5. Disadvantages of Direct Listing
6. Suitable Candidates for Direct Listing
7. Future of Direct Listing
8. Questions

SPOTIFY'S DIRECT LISTING – A CASE STUDY



April 3, 2018

30,526,500 shares traded on NYSE (ticker: SPOT)

(17% of the ordinary shares outstanding as of March 21, 2018)

\$165.90 opening price

\$149.01 closing price

TIMELINE – SEC FILING HISTORY

- December 18, 2017 – Draft Registration Statement on Form F-1 submitted for confidential review.
- January 17, 2018 – SEC Comment Letter (44 comments).
- January 31, 2018 – Amendment No. 1 to Registration Statement on Form S-1 submitted for confidential review.
- February 15, 2018 – SEC Comment Letter (18 comments).

TIMELINE – SEC FILING HISTORY (CONT'D)

- February 28, 2018 – Registration Statement on Form F-1 publicly filed, at least 15 days before Spotify's March 15 Investor Day. The SEC's confidential submissions policy requires a public filing at least 15 days before beginning a roadshow.
- March 8, 2018 – SEC Comment Letter (8 comments).
- March 14, 2018 – Amendment No. 1 to Registration Statement on Form F-1 publicly filed.
- March 14, 2018 – 40-to-one share split effected by Spotify to reduce the per share price of its ordinary shares to a more customary level for a newly listed company on the NYSE.

TIMELINE – SEC FILING HISTORY (CONT'D)

- March 15, 2018 – Spotify streamed live a 2-hour long Investor Day Presentation. The core presentation was treated like a FWP and roadshow and was not required to be filed.
- However, four additional decks, posted on its investor relations website, entitled, “Platform and Marketplace,” “The Big Picture,” “Our Business Model,” and “Why Direct List?” were filed as an Issuer Free Writing Prospectus under Rule 433 (presumably because they were not presentations by management and did not meet the SEC’s definition of a roadshow).

TIMELINE – SEC FILING HISTORY (CONT'D)

- March 20, 2018 – Spotify request for acceleration filed.
- March 23, 2018 – SEC declared effective (i) Spotify's Registration Statement on Form F-1 and (ii) Spotify's short registration statement on Form 8-A to register under the 1934 Act to permit trading on the NYSE.
- March 26, 2018 – Spotify issued a press release providing its financial outlook for the first quarter and full year 2018, furnished to the SEC on Form 6-K.

TIMELINE – SEC FILING HISTORY (CONT'D)

- Spotify did not file the outlook press release as a FWP or include the outlook disclosure in the prospectus (presumably, concluding its absence was not a material omission).
- April 3, 2018 – Opening of trading on NYSE at 12:43 p.m., first trade at \$165.90, closing price at \$149.01.

SHARES ELIGIBLE FOR FUTURE SALE

- Upon registration, 178,112,840 ordinary shares were outstanding, all of which were “restricted securities” under Rule 144.
- Spotify’s Form F-1 was a resale shelf registration statement for the resale of 55,731,480 ordinary shares (about 31%) held by affiliates (including 21% owned by the two Founders) and by non-affiliates who had not held their shares long enough to satisfy the one year holding period requirement for a resale under Rule 144. (the “Registered Shareholders”)
- Spotify plans to keep the Form F-1 effective until approximately July 2, 2018 (90 days) to permit resales by the Registered Shareholders, and then withdraw the registration statement.

SHARES ELIGIBLE FOR FUTURE SALE (CONT'D)

- Tencent (a 9% shareholder of Spotify) had previously entered into a 3-year lock-up agreement expiring 2020, unrelated to the listing.
- No other Spotify shareholders were subject to any lock-up or other similar restriction on selling shares.
- As a result, approximately 91% of the outstanding shares were eligible to be sold on the opening day of trading.
- Affiliates will be permitted to resell under the registration statement without regard to any volume limitations or other conditions under Rule 144 until Spotify withdraws the registration statement.
- Since Spotify is a Foreign Private Issuer (and, as a result, not subject to Section 16 of the Securities Exchange Act), it is unlikely we will know who sold until Spotify files its next annual report on Form 20-F.



PLAN OF DISTRIBUTION/SELLING SHAREHOLDERS

- Spotify was not a party to any arrangement with any Registered Shareholder or any broker-dealer with respect to sales of shares by the Registered Shareholders.
- Spotify had no input as to if or when any Registered Shareholder (or, for that matter, other shareholders holding the balance of the 91% of the outstanding shares eligible for resale) may, or may not, elect to sell their ordinary shares or the prices at which any such sales may occur.
- As Deborah will explain in more detail, the Designated Market Marker (DMM), consulted with Morgan Stanley, Spotify's financial advisor, in setting the opening public price for Spotify at \$165.90 per share.



PLAN OF DISTRIBUTION/SELLING SHAREHOLDERS (CONT'D)

- The DMM based the opening public price on buy and sell orders collected by the NYSE from various broker-dealers and its determination of where buy orders can be matched with sell orders at a single price.
- Spotify was not permitted to consult or coordinate with the DMM or its financial advisor in setting the opening price.
- Based on reporting in The Wall Street Journal, the DMM published several pre-opening indications, which provided the market with a price range of where the DMM anticipated the opening price would be, and then adjusted the pre-opening indications accordingly, and the NYSE opening did not occur until late in the day, at 12:43 p.m. on April 3, 2018.

KEY RISK FACTORS

Based on SEC Comments on Spotify's Form F-1:

- Highlight that direct listing is novel and may result in more volatile trading volume and price
- Risk factors for the following should be separately discussed
 - opening price may have little or no relationship to historic trading prices
 - no lock-up agreements exist - and what effect that may have
 - trading prices may fluctuate after initial listing
 - discuss uncertainties of NYSE process
- Describe difference of direct listing vs traditional IPO

KEY RISK FACTORS (CONT'D)

- Discuss typical IPO safeguards missing from direct listing and possible resulting trading prices + volume uncertainty
 - no underwriter's greenshoe (which would have permitted them to purchase additional issuer shares at the IPO price to prop up the share price following the IPO)
 - no book-building process to determine indications of interest
 - unpredictable supply of shares available for sale
- Risk that active, liquid and orderly market may not develop or be sustained
 - why less price-sensitive investors may have greater influence in initial price
 - how “professional” investors’ purchase or indication of interest may be factored in pricing

KEY RISK FACTORS (CONT'D)

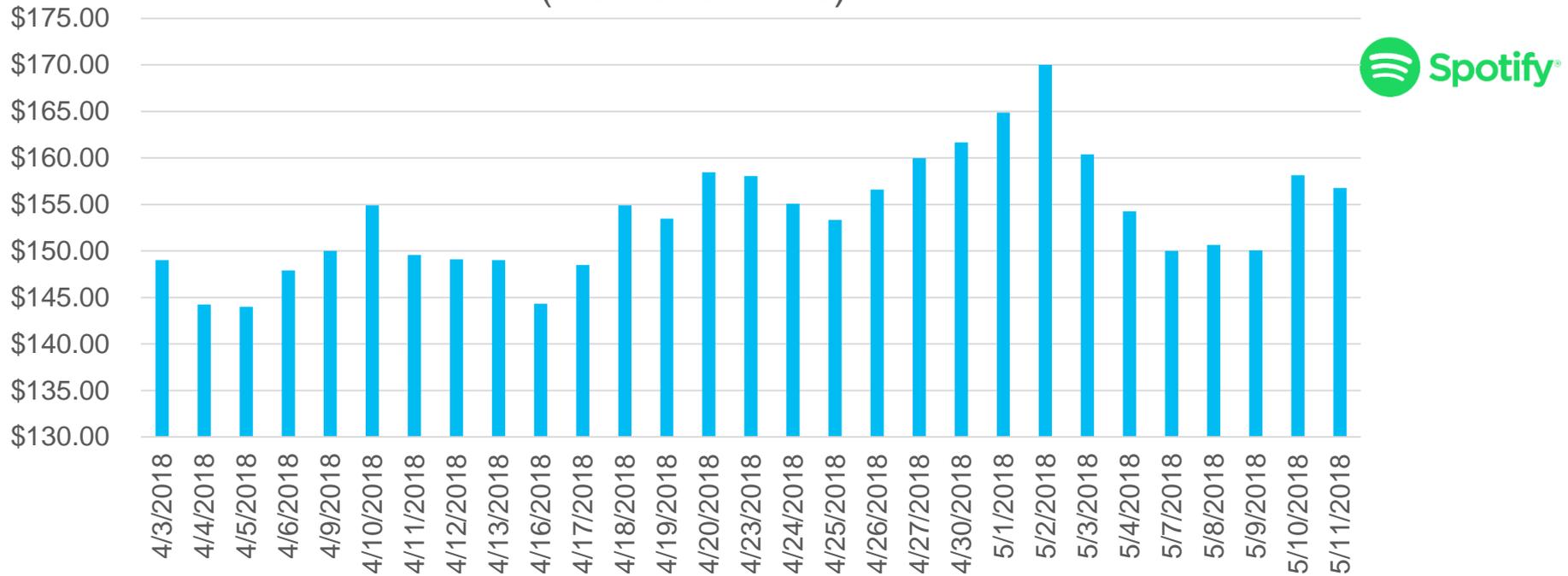
Other SEC Comments:

Detail procedures for determining opening trading price

- DMM consultation with financial advisor to effect a fair and orderly opening trading price
- Cannot guarantee stable opening trading price
- May create greater risk to potential investors than IPO
- Discuss how buy and sell orders are determined without a traditional price range
- Discuss whether investors will have access to Reference Price set by the DMM before submitting buy or sell orders
- Disclose name of financial advisor and relationship

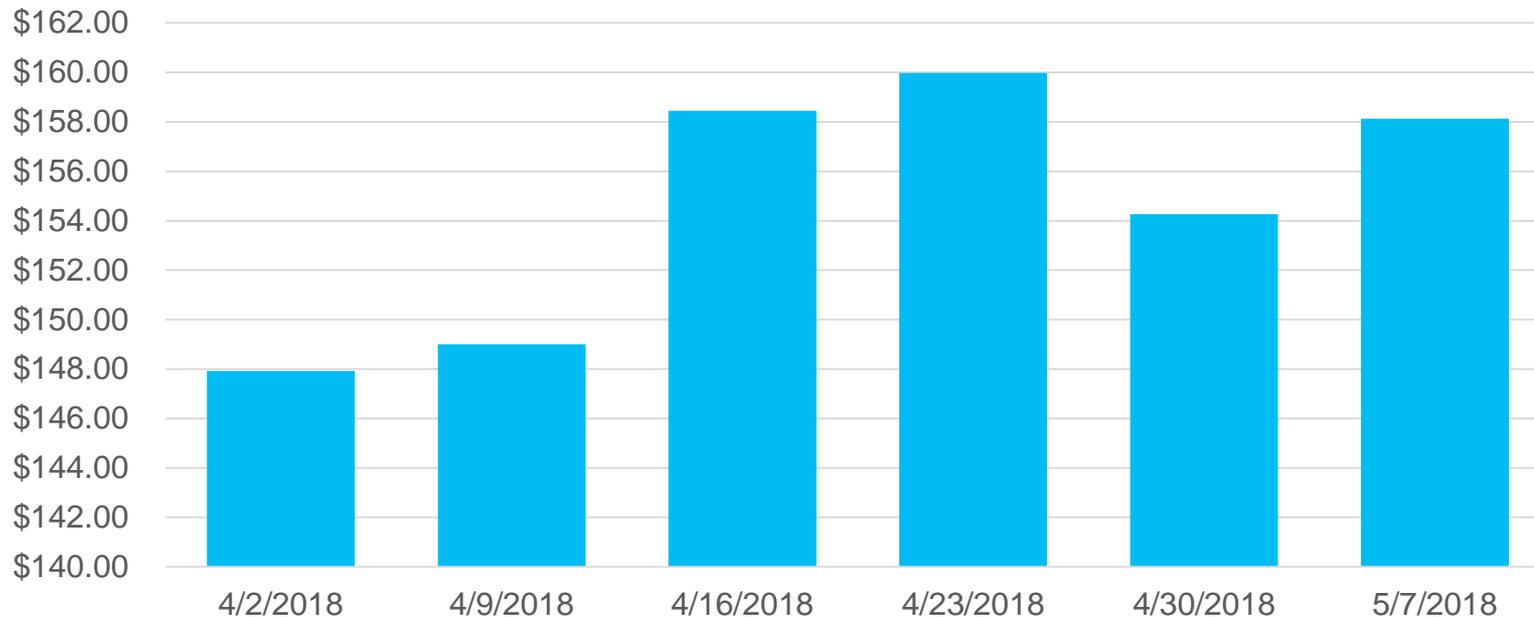
WAS THE SPOTIFY DIRECT LISTING A SUCCESS?

SPOT Performance Since Direct Listing (Daily)
(4/3/18–5/11/18)



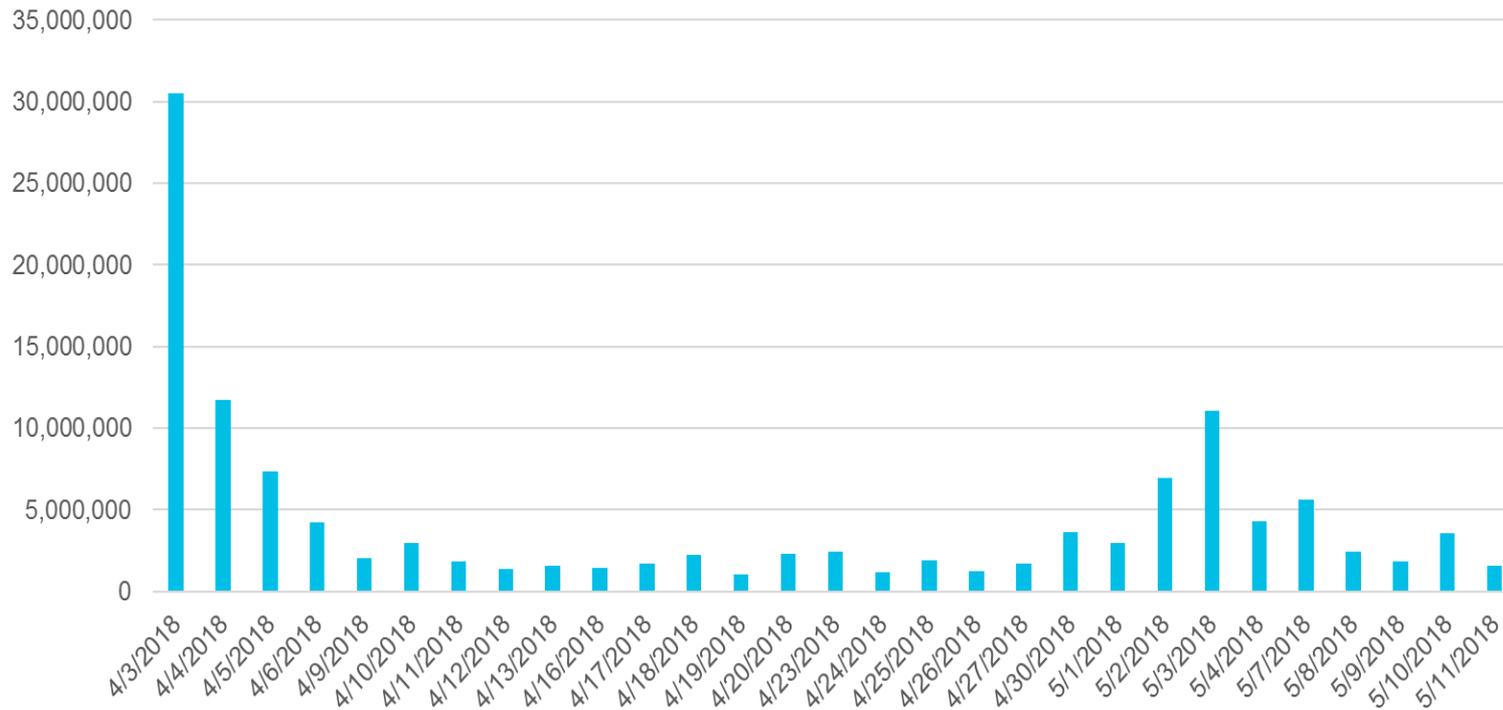
WAS THE SPOTIFY DIRECT LISTING A SUCCESS? (CONT'D)

SPOT Performance Since Direct Listing (Weekly)
(4/3/18–5/11/18)



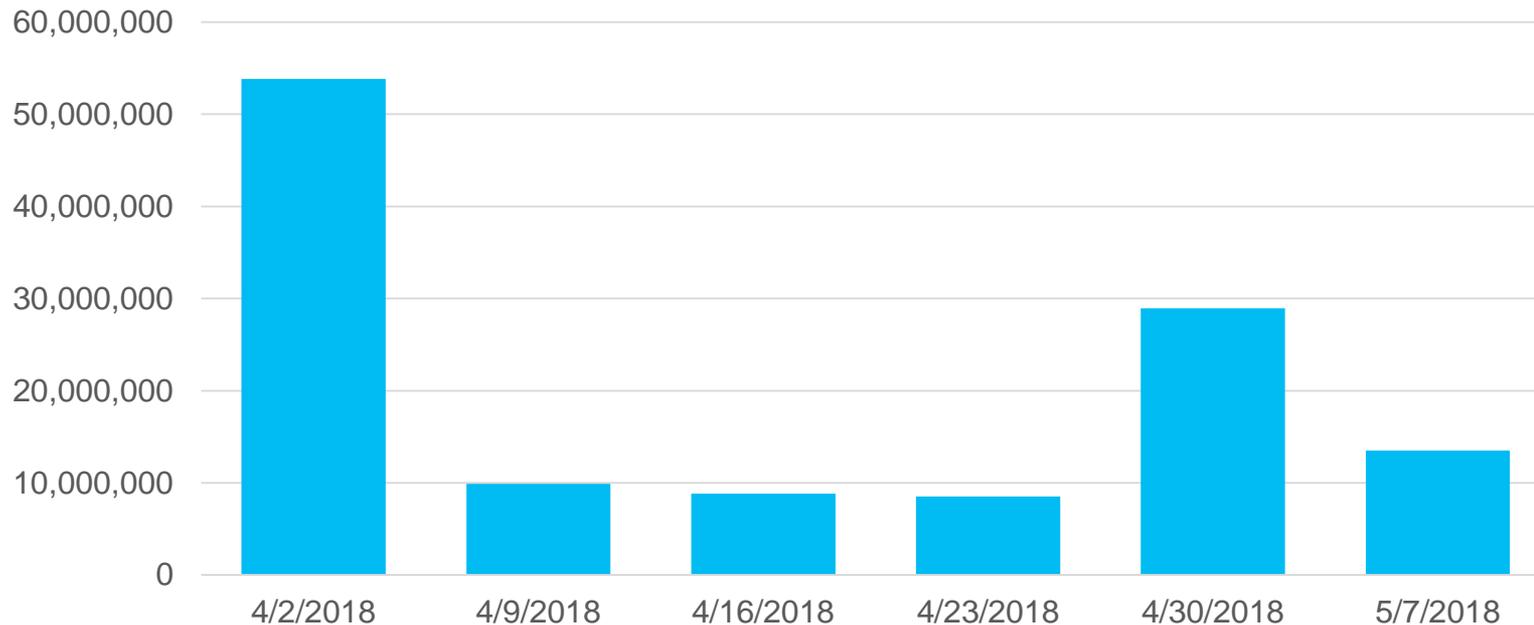
WAS THE SPOTIFY DIRECT LISTING A SUCCESS? (CONT'D)

SPOT Volume of Shares Traded Since Direct Listing (Daily)
(4/3/18–5/11/18)



WAS THE SPOTIFY DIRECT LISTING A SUCCESS? (CONT'D)

SPOT Volume of Shares Traded Since Direct Listing
(Weekly)
(4/3/18–5/11/18)



NYSE LISTING – GENERAL REQUIREMENTS

Listed Company Manual Section 1 The Listing Process.

Listing is within the discretion of the NYSE, even if criteria for listing are met

Stated policy of NYSE:

- list in connection with an underwritten IPO,
- on transfer from another market, or
- pursuant to a spin-off

NYSE LISTING – GENERAL REQUIREMENTS (CONT'D)

Criteria for Domestic Companies for Equity Securities (Section 102.01)

Number of Shareholders:

- In connection with an IPO or Initial Firm Commitment Underwriting:
 - at least 400 holders of a round lot (100 shares) or other trading unit, and
 - 1,100,000 publicly held shares
- In connection with transfer from another exchange:
 - at least 400 holders of a round lot (100 shares) or other trading unit, or
 - 2,200 total stockholders and an average monthly trading volume for the most recent 6 months of 100,000 shares, or
 - at least 500 total stockholders and an average monthly trading volume for the most recent 12 months of 1,000,000 shares
- Includes the number of beneficial holders held in the name of NYSE members



NYSE LISTING – GENERAL REQUIREMENTS (CONT'D)

Market Value of Publicly Held Shares:

- Market Value of Publicly Held Shares:
 - For companies that list at the time of their IPO or first firm commitment underwritten offering: \$40,000,000
 - Minimum price of \$4.00 per share
 - Underwriter represents anticipated value of offering
 - For other companies: \$100,000,000
 - Publicly-held shares exclude directors, officers, and their immediate families and concentrated holdings of 10% or more

NYSE LISTING – GENERAL REQUIREMENTS (CONT'D)

Earning Test (NYSE Manual Section 102.01C)

- Pre-tax earnings from continuing operations of at least
 - \$10,000,000 in the aggregate for most recent three fiscal years,
 - earnings positive in each year, and
 - at least \$2,000,000 in each of the most recent two years; or
- Pre-tax earnings from continuing operations of at least
 - \$10,000,000 in the aggregate for most recent three fiscal years,
 - at least \$5,000,000 in the most recent year, and
 - at least \$2,000,000 in the next most recent year; or
- \$200,000,000 in global market capitalization
 - with a closing price of at least \$4 per share for a period of at least 90 consecutive days

NYSE LISTING – GENERAL REQUIREMENTS (CONT'D)

Criteria for Equity Securities of Foreign Private Issuers NYSE Manual Section 103.00

- Apply U.S. Numerical Standards or
- Alternate Listing Standards for Foreign Private Issuers, and
- Requirements for certain corporate governance practices
- Requirements for reporting of interim earnings
- Number of Shareholders (100 or more shares): 5,000 worldwide
- Number of shares publicly held: 2,500,000 worldwide
- Market Value of Publicly held shares \$60,000,000 worldwide



PERMITTED DIRECT LISTINGS BEFORE FEBRUARY 2, 2018

LISTED COMPANY MANUAL

SECTION 102.01(B) FOOTNOTE (E)

For companies which have only distributed securities in private placements exempt from registration under the Securities Act of 1933, if

- not registered under the Exchange Act
- listing is concurrent with the effectiveness of a Securities Act registration of a secondary offering
- the company has met the \$100,000,000 market value of publicly-held shares based on the lesser of:
 - an independent third-party valuation (a “Valuation”); and
 - the most recent trading price of the common stock in a trading system for unregistered securities operated by a national securities exchange or registered broker-dealer (a “Private Placement Market”)



NYSE PERMITTED DIRECT LISTINGS BEFORE FEBRUARY 2, 2018: VALUATION

Valuation

- provided by entity with significant experience and demonstrable competence in providing valuations
- as of a recent date to approval for listing
- consideration of the following in the valuation:
 - the annual financial statements required to be included in the registration statement under the Securities Act
 - any quarterly statements required to be included in the registration statement



NYSE PERMITTED DIRECT LISTINGS BEFORE FEBRUARY 2, 2018: PRIVATE PLACEMENT MARKET VALUE

Private Placement Market Value

- trading price trends for the stock over several months
- sustained history over several months showing market value in excess of \$100,000,000

NYSE INITIAL PROPOSED CHANGES

NYSE's initial proposal (SR-NYSE-2017-12) filed with the SEC on March 27, 2017

- supplemented Footnote (E) to Section 102.01B of the Listing Company Manual
- designed to more fairly compete with NASDAQ listing
- for large companies which do not have common stock actively traded in a Private Placement Market or whose shares are not sufficiently actively traded to provide reasonable basis for the NYSE to reach conclusions about listing qualification



NYSE INITIAL PROPOSED CHANGES (CONT'D)

- exception to the Private Placement Market criterion for listing if recent valuation indicated \$250 million in market value of publicly-held shares
- Valuation provided by entity with significant experience and demonstrable competence in providing such valuations
- listing upon effectiveness of a Exchange Act registration without any concurrent Securities Act registration
- asserted Exchange Act registration disclosures comparable to those in a Securities Act securities offering registration



TORTURED COURSE OF NYSE INITIAL PROPOSAL

On May 12, 2017, without further comment, the SEC extended for 45 days its time period for reviewing the NYSE proposal

- no public comments had been received
- no SEC statement as to the reason for postponing its action

TORTURED COURSE OF NYSE INITIAL PROPOSAL (CONT'D)

On May 16, 2017, the NYSE filed Amendment No. 1 to the proposed rule change

- superseded and withdrew the initial proposal
- added an independence test for the Valuation Agent for Footnote (E) listings
 - Valuation Agent could not own or have a right to receive exercisable within 60 days more than 5% of the class of securities to be listed
 - Valuation Agent and affiliates cannot have provided investment banking services within 12 months prior to the date of the valuation
 - Valuation Agent and affiliates cannot have been engaged by listing applicant to provide investment banking services in connection with the proposed listing, any related financing, or other related transactions
- the NYSE would evaluate any market factors or other factors which could cause concern that the value had diminished since the date of the Valuation



TORTURED COURSE OF NYSE INITIAL PROPOSAL (CONT'D)

On May 24, 2017, the NYSE filed Amendment No. 2 to the proposed rule change

- withdrew Amendment No. 1
- appears to have corrected one or more minor typographical errors in the form of proposed SEC release
- reset the 45/90 day SEC review period



TORTURED COURSE OF NYSE INITIAL PROPOSAL (CONT'D)

On June 7, 2017, the NYSE filed Amendment No. 3 to the proposed rule change

- withdrew Amendment No. 2
- may have corrected one or more minor typographical errors in the form of proposed SEC release
- reset the 45/90 day SEC review period

On June 19, 2017, the NYSE withdrew the proposed rule as amended (SEC Release No. 34-81000, June 22, 2017)

EVOLUTION OF NYSE SECOND PROPOSAL

NYSE's second proposal (SR-NYSE-2017-30) filed with the SEC on June 13, 2017, and published for comment on June 15, 2017 (SEC Release No. 80933: File No. SR-NYSE-2017-30)

- focused on the Nasdaq competitive issue
 - reiterated that Nasdaq has rules which on an entirely discretionary basis allowed it to list previously private companies and had, over time, listed such companies in connection with the effectiveness of a selling shareholder registration statement (under the Securities Act) without an underwritten offering
 - added the NYSE belief that the Nasdaq would also take the position that it could list a company upon the effectiveness of a Exchange Act registration statement (Form 10)
 - stated NYSE belief that it needed to be competitive with Nasdaq by being able to list in either circumstance
 - reiterated the NYSE preference for a transparent and consistent approach to determining compliance with the market capitalization criterion



EVOLUTION OF NYSE SECOND PROPOSAL (CONT'D)

NYSE's Second Proposal

- re-proposed amendments to Footnote E to Section 102.01B of the Listed Company Manual for companies lacking a Private Placement Market Valuation
- added rules related to the procedures for opening of trading for a listing applicant under Footnote E that did not have recent trading in a Private Placement Market before listing
- proposed requiring a listing applicant without recent trading in a Private Placement Market to have a financial adviser
- proposed amending its market rules
 - Rule 15 “Pre-Opening Indications and Opening Order Imbalance Information”
 - Rule 104 “Dealings and Responsibilities of DMMs [Designated Market Makers]”
 - Rule 123D “Openings and Halts in Trading”



EVOLUTION OF NYSE SECOND PROPOSAL (CONT'D)

On July 28, 2017, the NYSE filed Amendment No. 1 to the proposed rule change

- superseded and withdrew the initial proposal
- refined the Reference Price under Rule 15 for a security listed under Footnote (E) to be the most recent transaction price in a Private Placement Market only if the company has had “recent sustained trading” in such market
- conformed the language in Rule 104 to provided that the opening price of a security listed under Footnote (E) that has not had a “recent sustained history of trading” in a Private Placement Market would be determined by the DMM in consultation with the issuer’s financial advisor
- provided that the regulatory trading halt under Rule 123D(d) would not apply to an initial public offering on the NYSE
- prior to the initial pricing of a security not listed on a national securities exchange or traded in an over the counter market pursuant to FINRA Form 211, terminating the halt when the DMM opens the security



EVOLUTION OF NYSE SECOND PROPOSAL (CONT'D)

Only one comment letter was received – from a Georgetown McDonough School of Business professor who urged adoption of the proposal

On August 3, 2017, the SEC extended its 45-day review period to September 18, 2017

On August 16, 2017, the NYSE filed Amendment No. 2 to the proposed rule change (SEC Release 34-81440, August 18, 2017)

- superseded and withdrew Amendment No. 1
- restated the amendments to Rules 15, 104 and 123D proposed in Amend. No. 1
- clarified that the amendment to Rule 104 required consultation between the DMM and the issuer's financial advisor on the opening "on the first day of trading"

EVOLUTION OF NYSE SECOND PROPOSAL (CONT'D)

On September 15, 2017, the SEC issued an “Order Instituting Proceedings” on whether to approve the proposed rule amendments (SEC Release 34-81640)

- although noting that the institution of proceedings did not mean that the SEC had reached a conclusion to disapprove the proposal
- raised issues related to whether permitting listing upon effectiveness of a Exchange Act registration without any securities registration under the Securities Act
 - does it satisfy Section 6(b)(5) which requires that the rules of a national securities exchange be designed to:
 - promote just and equitable principal of trade
 - remove impediments to and perfect the mechanics of a free and open market and a national market system
 - protect investors and the public interest
 - the SEC noted in the Order that the proposal created “unique considerations” as to
 - the role of various distribution participants
 - the extent and nature of pricing information available to market participants prior to commencement of trading
 - the availability of information indicative of the number of shares that are likely to be made available for sale at the commencement of trading



EVOLUTION OF NYSE SECOND PROPOSAL (CONT'D)

Specific questions asked by the SEC in the Order

(1) Would a direct listing based only on an Exchange Act registration without prior trading and Securities Act registration present unique considerations, including with respect to the role of various distribution participants, the extent and nature of pricing information available to market participants prior to the commencement of trading, and the availability of information indicative of the number of shares that are likely to be made available for sale at the commencement of trading?

(2) Would these considerations raise any concerns, including with respect to promoting just and equitable principles of trade, removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest?



EVOLUTION OF NYSE SECOND PROPOSAL (CONT'D)

Specific questions asked by the SEC in the Order

(3) To what extent would a direct listing impact the ability of the DMM to facilitate the opening (or otherwise fulfill its obligations as a DMM) on the first day of trading of a security listed only with an Exchange Act registration?

(4) To what extent would any such impact be mitigated by the proposed requirement that the DMM consult with a financial adviser to the issuer in order to effect a fair and orderly opening of the security?

EVOLUTION OF NYSE SECOND PROPOSAL (CONT'D)

One set of comments were received (October 12, 2017, from Cleary Gottlieb Steen & Hamilton LLP) addressing question #1:

- role of market participants
 - since the only stockholders eligible to sell their securities would be non-affiliates which have held for more than one year, Rule 144 would be available without Securities Act registration
 - transactions are likely to be effected by dealers and exempt from Securities Act registration under Section 4(a)(3)
 - informational sessions with market participants held by the issuer or its financial advisor should not convert the transaction into a “distribution” by the issuer

EVOLUTION OF NYSE SECOND PROPOSAL (CONT'D)

- extent and nature of pricing information available prior to commencement of trading varying from IPO and affecting investor protection
 - extent and nature of pricing information available prior to commencement of trading varying from IPO and affecting investor protection
 - Form 10 or Form 20-F require business and financial disclosures “generally as comprehensive” as an IPO registration statement
 - IPO prospectus includes Regulation S-K, Item 505 describing factors considered in determining offering price not required by Form 10, but
 - “in our experience Item 505 disclosure tends to be boilerplate”
 - information for the preliminary prospectus pricing range is publicly available knowledge of comparable public companies and their trading prices and comparable financial metrics of the new issuer
 - Valuation is undertaken by experienced independent entity

EVOLUTION OF NYSE SECOND PROPOSAL (CONT'D)

- availability of information about the number of shares likely available for sale
 - Item 201 disclosure of shares available for sale is required under both Securities Act and Exchange Act registrations
 - issuer would not undertake cost and management distraction of preparing a Form 10 to register under the Exchange Act unless substantial shareholder interest in re-sales



EVOLUTION OF NYSE SECOND PROPOSAL (CONT'D)

On December 8, 2017, the NYSE filed Amendment No. 3 to the proposed rule change but it was not published until February 2, 2018 (SEC Release 34-82627) when the SEC simultaneously granted accelerated approval

- superseded and withdrew Amendment No. 2
- for the first time, the proposed provision permitting listing without a simultaneous re-sale registration under the Securities Act was removed by the NYSE
- no comment in the Release as to the basis for requiring Securities Act registration – it only rated a footnote reference
- all other changes in Amendment No. 2 were adopted

EVOLUTION OF NYSE SECOND PROPOSAL (CONT'D)

The leap from the NYSE proposal to permit listing for companies upon effectiveness of a Exchange Act registration without a concurrent IPO or other Securities Act registration was not explained by the SEC in the approving Release.

One comment letter was filed in response to the SEC's request for comments as to whether the NYSE amendments approved were consistent with the provisions of Section 6(b)(5) of the Exchange Act. The Council of Institutional Investors letter (February 22, 2018)

- supported the rule changes; and
- strongly supported the change to require a Securities Act registration statement as a basis for the direct registration.

CURRENT NYSE EXCHANGE LISTING REQUIREMENTS FOR COMPANIES WITHOUT A PRIOR EXCHANGE ACT REGISTRATION AND NOT IN CONNECTION WITH AN UNDERWRITTEN INITIAL PUBLIC OFFERING

Listing Criteria: Footnote (E) to Listing Company Manual Section 102.01B

- Company is listing upon the effectiveness of a registration statement registering only the resale of shares sold by the company in earlier private placements
- \$100,000,000 aggregate market value of publicly held shares determined to be met by the lesser of two valuations:
 - an independent third-party valuation (a "Valuation") of the company
 - the most recent trading price for the company's common stock in a trading system for unregistered securities operated by a national securities exchange or a registered broker-dealer (a "Private Placement Market")
- if the company does not have common stock trading in a Private Placement Market
 - the requirement is for a Valuation of at least \$250,000,000



CURRENT NYSE EXCHANGE LISTING REQUIREMENTS FOR COMPANIES WITHOUT A PRIOR EXCHANGE ACT REGISTRATION AND NOT IN CONNECTION WITH AN UNDERWRITTEN INITIAL PUBLIC OFFERING (CONT'D)

Elements of the valuation

- provided by an entity that has significant experience and demonstrable competence in the provision of such valuations
- of a recent date as of the time of the approval of the company for listing
- the evaluator must have considered, among other factors, the annual financial statements required to be included in the registration statement, along with financial statements for any completed fiscal quarters subsequent to the end of the last year of audited financials included in the registration statement

CURRENT NYSE EXCHANGE LISTING REQUIREMENTS FOR COMPANIES WITHOUT A PRIOR EXCHANGE ACT REGISTRATION AND NOT IN CONNECTION WITH AN UNDERWRITTEN INITIAL PUBLIC OFFERING (CONT'D)

Independence of Valuation Agent

- At the time it provides such valuation, the valuation agent or any affiliated person or persons beneficially own in the aggregate as of the date of the valuation, more than 5% of the class of securities to be listed, including any right to receive any such securities exercisable within 60 days.
- The valuation agent or any affiliated entity has provided any investment banking services to the listing applicant within the 12 months preceding the date of the valuation. For purposes of this provision, "investment banking services" includes, without limitation, acting as an underwriter in an offering for the issuer; acting as a financial adviser in a merger or acquisition; providing venture capital, equity lines of credit, PIPEs (private investment, public equity transactions), or similar investments; serving as placement agent for the issuer; or acting as a member of a selling group in a securities underwriting.
- The valuation agent or any affiliated entity has been engaged to provide investment banking services to the listing applicant in connection with the proposed listing or any related financings or other related transactions.



CURRENT NYSE EXCHANGE LISTING REQUIREMENTS FOR COMPANIES WITHOUT A PRIOR EXCHANGE ACT REGISTRATION AND NOT IN CONNECTION WITH AN UNDERWRITTEN INITIAL PUBLIC OFFERING (CONT'D)

Other NYSE considerations regarding the Valuation

- any market factors or factors particular to the listing applicant that would cause concern that the value of the company had diminished since the date of the Valuation
- will continue to monitor the company and the appropriateness of relying on the Valuation up to the time of listing
- may withdraw its approval of the listing at any time prior to the listing date if it believes that the Valuation no longer accurately reflects the company's likely market value

Other NYSE consideration regarding Private Placement Market Price

- the trading price trends for the stock in the Private Placement Market over a period of several months prior to listing
- rely on a Private Placement Market price if it is consistent with a sustained history over that several month period evidencing a market value in excess of the requirement

RELATED AMENDMENTS TO NYSE RULES: RULE 15

Rule 15. Pre-Opening Indications and Opening Order Imbalance Information

(c) *Reference Price.*

(1) The Reference Price for a security, other than an American Depositary Receipt ("ADR"), will be:

...

(D) for a security that is listed under Footnote (E) to Section 102.01B of the Listed Company Manual that has had recent sustained trading in a Private Placement Market prior to listing, the most recent transaction price in that market or, if none, a price determined by the Exchange in consultation with a financial advisor to the issuer of such security.



RELATED AMENDMENTS TO NYSE RULES: RULE 104

Rule 104. Dealings and Responsibilities of DMMs

(a) DMMs registered in one or more securities traded on the Exchange must engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market insofar as reasonably practicable. The responsibilities and duties of a DMM specifically include, but are not limited to, the following:

(2) . . . When facilitating the opening on the first day of trading of a security that is listed under Footnote (E) to Section 102.01B of Listed Company Manual and that has not had recent sustained history of trading in a Private Placement Market prior to listing, the DMM will consult with a financial advisor to the issuer of such security in order to effect a fair and orderly opening of such security.



RELATED AMENDMENTS TO NYSE RULES: RULE 123D

Rule 123D. Openings and Halts in Trading

(d) Initial Listing Regulatory Halt. The Exchange may declare a regulatory halt in a security that is the subject of an initial pricing on the Exchange of a security that has not been listed on a national securities exchange or traded in the over-the-counter market pursuant to FINRA Form 211 immediately prior to the initial pricing. This regulatory halt will be terminated when the DMM opens the security.



ADVANTAGES OF DIRECT LISTING

- Enhanced liquidity for shareholders
 - No lock-up agreements restricting resales by directors, officers, principal shareholders
 - Registered resale of shares by Affiliates is permitted without complying with the volume limitations and holding period conditions that would typically apply to an Affiliate resale under Rule 144 following a typical underwritten IPO
 - Private investors and employee shareholders are able to sell their shares on the NYSE, instead of the private market, and obtain better and more efficient market-based pricing and a more orderly process for selling shares.

ADVANTAGES OF DIRECT LISTING (CONT'D)

- No dilution for existing Shareholders because the company is not issuing any new shares
- In Spotify's view, direct listing is a market-driven, more egalitarian and transparent process for setting the opening bid public price, with no limited public float, no IPO allocations, and no preferential treatment for any investor.
- "Unlike the traditional IPO, it's a completely level playing field with no built in 'pop' for anyone." (quoting from Spotify's Investor Day transcript, "Why Direct List?")

ADVANTAGES OF DIRECT LISTING (CONT'D)

- Reduced expenses of the registration
 - Spotify's 6-K reported approximately \$29 million in "Other advisers' fees" for its three financial advisors Morgan Stanley, Goldman Sachs and Allen & Company.
- Other general benefits of being a publicly-traded company
 - Access to capital markets for financing
 - Use of company stock as acquisition currency
 - Enhanced prestige and name recognition

DISADVANTAGES OF DIRECT LISTING

- No new capital is raised, which is often the primary motivation for going public
- Uncertainty whether an active public market for the company's shares will develop and whether the trading price and resulting market capitalization for the company, will exceed the history of trading in private transactions.
- Substantial costs to the issuer not offset by new capital raised.
- Increased risk of immediate price volatility and harm to reputation if the listing is not successful
 - Smaller public float because no public offering of shares
 - No market stabilization activities by underwriters (no greenshoe options)
 - No 180- day lock-up to keep a “hot” market from being flooded with shares by selling shareholders

DISADVANTAGES OF DIRECT LISTING (CONT'D)

- Other general disadvantages of being a publicly-traded company
 - Substantial additional legal, accounting, investor relations and compliance costs
 - Ongoing disclosure obligations (Forms 10-K, 10-Q, 8-K, etc.)
 - Potential for competitive harm as a result of disclosure obligations
 - Potential for loss of control

SUITABLE CANDIDATES FOR DIRECT LISTING

- Company with significant name recognition as a private company so that its shares are more likely to gain market acceptance by institutional and retail investors without the extensive marketing and publicity typically associated with an underwritten IPO
- Profitable company which does not need to raise money and/or a company with access to plentiful capital in the private markets and a high valuation as a private company
- Company with a large group of existing private investors and employee shareholders seeking the ability to sell their shares
- Company that otherwise meets the NYSE general listing requirements for Domestic Companies or Foreign Private Issuers discussed above
- Company with the management sophistication and depth required for public reporting.

FUTURE OF DIRECT LISTING – WILL IT REPLACE UNDERWRITTEN IPOs?

- Most companies do need to raise new money
- Limited supply of privately held “Unicorns” that want to assume the burdens associated with becoming a public company
- Success of direct listing to provide liquidity for existing shareholders may depend on the buzz/name recognition surrounding the issuer’s brand/products
- May be better suited for a Foreign Private Issuer

QUESTIONS

