

Memorandum

NYSE Adopts Rule Requiring Foreign Private Issuers to Submit Semi-Annual Unaudited Financial Information

March 2, 2016

On February 5, 2016, the New York Stock Exchange (“NYSE”) filed with the Securities and Exchange Commission (“SEC”) a proposed rule change that would require listed foreign private issuers to submit a Form 6-K to the SEC with unaudited financial information at least semi-annually.¹ On February 19, 2016, the SEC designated the proposed rule change “operative upon filing,” waiving the 30-day operative delay typically associated with proposed rule changes by self-regulatory organizations.²

In the NYSE’s view, the issuance of financial information on at least a semi-annual basis is “essential for the protection of investors, as annual financial disclosure is too infrequent to enable investors to make informed investment decisions, especially as that information ages in the latter part of the disclosure cycle.” Aiming to “establish a minimum interim reporting regime applicable to all listed foreign private issuers,”³ the NYSE added Section 203.03 to its Listed Company Manual, which provides that “each listed foreign private issuer must, at a minimum, submit to the SEC a Form 6-K that includes (i) an interim balance sheet as of the end of its second fiscal quarter and (ii) a semi-annual income statement that covers its first two fiscal quarters.”⁴

¹ See Securities and Exchange Commission, “[Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Listed Company Manual to Adopt a Requirement that Listed Foreign Private Issuers Must, At a Minimum, Submit a Form 6-K to the Securities and Exchange Commission Containing Semi-Annual Unaudited Financial Information](#),” Release No. 34-77198; File No. SR-NYSE-2016-12 (Feb. 19, 2016).

² The SEC determined that waiving the 30-day operative delay is “consistent with the protection of investors and the public interest.” Specifically, in issuing the waiver, the SEC noted that the proposed rule “should help to ensure that investors will have, or continue to have, the necessary information to make informed investment decisions for all listed foreign private issuers” and that it “will not be unduly [sic] burdensome on foreign private issuers” since most foreign private issuers already provide the requisite information on a voluntary basis. *Id.*

³ *Id.*

⁴ NYSE Listed Company Manual § 203.03.

The Form 6-K is required to be submitted to the SEC “no later than six months following the end of the company’s second fiscal quarter.” The financial information disclosed in the Form 6-K “must be presented in English, but does not have to be reconciled to” U.S. Generally Accepted Accounting Principles (“GAAP”).

Section 203.03 is effective for any fiscal year beginning on or after July 1, 2015. In other words, the new listing rule covers six-month periods ending as early as December 31, 2015.

In addition to adopting Section 203.03, the NYSE amended Section 802.01E of its Manual “to subject listed foreign private issuers that have not timely filed the required Form 6-K to the same compliance procedures as are applied to listed companies that are late in filing their annual report or Form 10-Q.”

Finally, the NYSE amended Section 103.00 of its Manual “to clarify that, notwithstanding the provision in that section that allows listed foreign private issuers to follow home country practice in lieu of complying with the Exchange’s interim reporting requirements applicable to domestic companies, all listed foreign private issuers will be required to disclose interim financial information in a Form 6-K on a semi-annual basis.”

As the SEC indicates, most NYSE-listed foreign private issuers already provide the information required by new Section 203.03. Accordingly, for these issuers, nothing new is required to the extent such information is provided to the SEC within six months of the end of the issuer’s second fiscal quarter.

Although the SEC has deemed the NYSE’s proposed rule change to be “operative upon filing,” the SEC has invited interested persons to comment.⁵ Comments should be received by the SEC no later than 21 days following publication in the Federal Register.

Nasdaq already has a comparable listing rule.

⁵ The SEC is authorized to temporarily suspend a rule change within 60 days of its filing if the SEC believes that such action is “necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the [Exchange] Act.” *Id.*

If you have any questions or would like additional information, please do not hesitate to contact **Yafit Cohn** at +1-212-455-3815 or yafit.cohn@stblaw.com, or any other member of the Firm's Public Company Advisory Practice.

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