

Governance Update

NYSE Amends Related Party Transaction Approval Requirements

The New York Stock Exchange (“NYSE”) recently amended its rules regarding related party transaction approval requirements. As amended, Section 314.00 of the NYSE Listed Company Manual (“Section 314.00”) now requires a company’s audit committee or another independent body of a company’s board of directors to review in advance all “related party transactions” that must be disclosed: (i) by domestic companies under Item 404 of Regulation S-K of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), irrespective of transaction value; and (ii) by foreign private issuers under Item 7.B of Form 20-F, irrespective of materiality. Previously, Section 314.00 required that related party transactions be reviewed and evaluated (not necessarily in advance) by an appropriate group within the company, such as the audit committee or a similar body, and defined related party transactions as those that “normally include” transactions between a company and its officers, directors and principal shareholders.

Under Item 404(a) of Regulation S-K, a company (other than a foreign private issuer) must disclose certain transactions with any director or executive officer or any person (including any “group” under Section 13(d)(3) of the Exchange Act) that is a 5% or greater beneficial owner of any class of the company’s voting securities (or any immediate family member of any such person) in which any such related person has a direct or indirect material interest *and the transaction involves more than \$120,000.* (*Italicized text is inapplicable for purposes of Section 314.00.*) Foreign private issuers may satisfy the related party disclosure requirements of Item 404 by providing the information required by Item 7.B of Form 20-F, including more detailed information otherwise made publicly available or required to be disclosed by the company’s home jurisdiction or a market on which its securities are listed or traded. Item 7.B requires foreign private issuers to disclose any transaction or loans between the company and certain specified individuals (and close family members) and enterprises that are able to exercise control or significant influence over the company, including shareholders and management, that are *material* to the company or the related party, or are unusual in their nature or conditions, involving goods, services, or tangible or intangible assets, to which the company or any of its parent or subsidiaries was a party. (*Italicized text is inapplicable for purposes of Section 314.00.*)

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Amended Section 314.00 also requires a company's audit committee or another independent body of a company's board of directors, rather than any "appropriate" group within the company, to conduct prior review and oversight of any related party transaction for potential conflicts of interest. Any transaction found to be "inconsistent with the interests of the company and its shareholders" during the course of such review must be prohibited.

The rule amendments limit the flexibility that NYSE-listed companies previously enjoyed regarding their internal requirements for evaluating transactions with related parties. Companies listed on the NYSE should review and, as necessary, update their related party transaction policies and the charters governing the activities of the independent bodies charged with reviewing related party transactions (*e.g.*, audit committees) to ensure compliance with amended Section 314.00.



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