

Governance Update

NYSE Further Amends Related Party Transaction Approval Requirements

On August 19, 2021, the New York Stock Exchange (“NYSE”) further amended its rules regarding related party transaction approval requirements, reversing certain of the changes adopted in April 2021 such that “related party transactions” will once again be subject to review only if they: (i) in the case of domestic companies, have a transaction value greater than \$120,000 and (ii) in the case of foreign private issuers, are material to the company. As further amended, Section 314.00 of the NYSE Listed Company Manual (“Section 314.00”) requires a company’s audit committee or another independent body of a company’s board of directors to review in advance those “related party transactions” that must be disclosed (i) by domestic companies under Item 404 of Regulation S-K (“Item 404”) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and (ii) by foreign private issuers under Item 7.B of Form 20-F (“Item 7.B”).

Following the April 2021 amendment, Section 314.00 required related party transactions to be reviewed in advance by a company’s audit committee or another independent body of a company’s board of directors if such transaction was disclosable under Item 404 or Item 7.B, but without regard to applicable transaction value or materiality thresholds. As a result, Section 314.00 had subjected all related party transactions to advanced review, including those not required to be disclosed, creating additional compliance burdens for NYSE-listed companies, which would have been subject to disparate related party transaction approval requirements under NYSE rules and disclosure requirements under Securities and Exchange Commission (“SEC”) rules. The most recent amendment to Section 314.00 addresses this inconsistency by removing the references to “without regard to the transaction value” (in respect of Item 404) and “without regard to the materiality threshold” (in respect of Item 7.B), thereby applying a single standard for both review and disclosure.

Under Item 404(a), 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 a company’s voting securities (or any immediate family member of any such person) in which

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any such related person has a direct or indirect material interest and the transaction involves more than \$120,000. 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. The amended Section 314.00, however, maintains the requirement added in April 2021 that related party transactions be reviewed in advance by the audit committee (or another independent body of the board of directors).

The most recent amendments to Section 314.00 became effective on August 19, 2021 and will become operative 30 days thereafter (unless the SEC objects to the proposed amendments).



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