

## NYSE-LISTED FOREIGN PRIVATE ISSUERS REQUIRED TO SUBMIT SEMI-ANNUAL UNAUDITED FINANCIAL INFORMATION

Under a recently adopted rule, The New York Stock Exchange (“NYSE”) for the first time is requiring NYSE-listed foreign private issuers (“FPIs”) to submit semi-annual unaudited financial information to the Securities and Exchange Commission (“SEC”) on a Form 6-K. While the new requirement is a change of policy for the NYSE, it is in keeping with an existing rule of the NASDAQ Stock Market, which already requires semi-annual financial reporting by listed FPIs.<sup>1</sup>

The new NYSE rule is contained in a new Section 203.03 of the NYSE Listed Company Manual.<sup>2</sup> The semi-annual Form 6-K must include an interim unaudited balance sheet as of the end of the FPI’s second fiscal quarter and a semi-annual unaudited income statement that covers the FPI’s first two fiscal quarters. The information must be presented in English but is not required to be reconciled to U.S. GAAP.

The Form 6-K must be submitted to the SEC no later than six months following the end of the FPI’s second fiscal quarter.<sup>3</sup> The new requirement is applicable to any fiscal year beginning on or after July 1, 2015. Accordingly, an FPI with a June 30 fiscal year would need to submit its first Form 6-K under the new rule for the six months ended December 31, 2015 (which would be due no later than June 30, 2016), and an FPI with a December 31 fiscal year would need to submit its first Form 6-K under the new rule for the six months ended June 30, 2016 (which would be due no later than December 31, 2016).

The new rule became operative on February 19, 2016.<sup>4</sup>

Any NYSE-listed company that is a domestic issuer is already required by SEC rules to file a quarterly report on Form 10-Q containing unaudited financial information with respect to the most recently completed quarter within a specified period of time after the end of each of the company’s first, second and third fiscal quarters.

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<sup>1</sup> Pursuant to Listing Rule 5250(c)(2), each NASDAQ-listed FPI must submit to the SEC a Form 6-K with an interim balance sheet and income statement as of the end of the FPI’s second quarter. This information must be submitted no later than six months following the end of the second quarter.

<sup>2</sup> Section 203.03 was adopted on February 19, 2016. As discussed below, in addition to adding Section 203.03, the NYSE also made certain clarifying and related amendments to other sections of the Listed Company Manual.

<sup>3</sup> Section 203.03 of the NYSE’s Listed Company Manual.

<sup>4</sup> 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)) (hereinafter referred to as the “SEC Release”).

However, listed companies that are FPIs are not subject to any comparable SEC requirements. The SEC agreed with the NYSE that requiring semi-annual reporting of summary financial information by listed FPIs “is consistent with the protection of investors and the public interest since it will ensure that investors have access to information that is necessary for them to make informed decisions about investments in those companies.”<sup>5</sup>

The SEC also said it believes the proposed rule change will not be unduly burdensome on FPIs because, in the NYSE’s experience, almost all listed FPIs already issue interim financial information on at least a semi-annual basis.

Under current SEC rules, an FPI is required to file an annual report on Form 20-F containing annual audited financial statements with the SEC within four months after the end of each fiscal year. Also, an FPI is required to submit on a Form 6-K all material information, including financial information, not previously furnished to the SEC, which the FPI (i) makes or is required to make public pursuant to the law of its home country, or (ii) files or is required to file with a stock exchange on which its securities are traded and which was made public by that exchange or (iii) distributes or is required to distribute to its security holders.

Because the Form 6-K is required to be furnished promptly after the material contained in the report is made public as described in (i) through (iii) above, as the NYSE stated, FPIs may already be required to provide the financial information required under the NYSE’s new rule more frequently than semi-annually.<sup>6</sup>

In adopting the new rule, the NYSE’s intention is “solely to establish a minimum interim reporting regime applicable to all listed foreign private issuers” and to provide investors with more updated financial disclosure, particularly since annual financial information becomes less useful in understanding a company’s activities as the information ages in the latter part of the disclosure cycle.

However, the NYSE also stated that it is not seeking to “discourage companies from providing more expansive or more frequent interim financial information” and that the new Section 203.03 will not relieve FPIs of the obligation to comply with any reporting obligations they may have under the requirements of Form 6-K or home country law or regulation.”<sup>7</sup>

The NYSE also made the following related amendments to the NYSE Listed Company Manual:

- Amended Section 103.00 to clarify that, notwithstanding the provision in that section that permits listed FPIs to follow home country practice in lieu of complying with certain NYSE interim financial reporting requirements applicable to domestic companies, all listed

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<sup>5</sup> Id.

<sup>6</sup> It should be noted that, in addition to home country disclosure requirements and SEC rules, investor expectations and market practice may lead FPIs to publish interim financial statements.

<sup>7</sup> See SEC Release.

foreign private issuers must in all cases comply with the requirement of Section 203.03 to disclose interim financial information in a Form 6-K, at a minimum, on a semi-annual basis.

- Amended Section 802.01E to treat listed FPIs that fail to timely file semi-annual reports on Form 6-K similarly to listed domestic issuers that fail to file timely interim reports. Under amended Section 802.01E, an FPI that fails to file its Form 6-K incurs a filing delinquency and has an initial six month cure period. If the FPI does not submit all required filings during that initial six-month period, the FPI becomes subject to listing suspension and delisting, but the NYSE, at its discretion, will have the ability to allow the FPI an additional six-month period to comply. An FPI that does not become timely with the filing requirements within the compliance periods is subject to listing suspension and delisting.

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