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SEC Approves NYSE Rule Requiring FPIs to Submit Semi-Annual Financial Information

On February 19, 2016, the Securities and Exchange Commission (“SEC”) approved a new rule¹ proposed by the New York Stock Exchange (“NYSE”), requiring a NYSE-listed foreign private issuer (“FPI”) to submit semi-annual financial information to the SEC on Form 6-K. The same requirement already applies to NASDAQ-listed FPIs.²

New Section 203.03 of the NYSE Listed Company Manual requires a listed FPI, at a minimum, to submit to the SEC a Form 6-K with (i) an interim unaudited balance sheet as of the end of its second fiscal quarter and (ii) a semi-annual unaudited income statement that covers its first two fiscal quarters.³ This financial information on Form 6-K must be presented in English and submitted no later than six months following the end of a listed FPI’s second fiscal quarter. There are no further requirements. For example, the rule does not require a statement of cash flows, financial statement notes, presentation on a consolidated basis, compliance with any particular body of accounting principles or reconciliation to U.S. GAAP. A listed FPI is not obligated to submit interim financial statements for the first and third quarters, but it may of course provide more expansive or more frequent interim financial information if it chooses.

Section 203.03 is effective beginning with any fiscal year that starts on or after July 1, 2015. As a result, the first semi-annual period for which interim financial statements are required under the new rule is the six months ended December 31, 2015, for a listed FPI with a June 30 fiscal year. For a listed FPI with a December 31 fiscal year, the new rule applies to the six months ending June 30, 2016.

In proposing the rule, the NYSE stated that the additional disclosure will not create an unnecessary or inappropriate burden on NYSE-listed FPIs and that almost all NYSE-listed FPIs already provide semi-annual interim financial information.⁴ We believe very few listed FPIs will need to adjust their reporting practices to be in compliance with the new rule, since home-country requirements or market expectations lead most FPIs to publish interim

¹ See SEC Release No. 34-77198 (February 19, 2016).

² See NASDAQ Listed Company Manual Section 5250(c)(2), which states in relevant part: “Each Foreign Private Issuer shall submit on a Form 6-K an interim balance sheet and income statement as of the end of its second quarter. This information, which must be presented in English, but does not have to be reconciled to U.S. GAAP, must be provided no later than six months following the end of the Company’s second quarter.”

³ NYSE Listed Company Manual Section 203.03. The NYSE also amended Section 103.00 of the Listed Company Manual, to clarify that, despite the provision in that section allowing NYSE-listed FPIs to follow home-country practice in lieu of complying with the NYSE’s interim reporting obligations applicable to domestic companies, all NYSE-listed FPIs would be required to disclose semi-annual interim financial information on Form 6-K in accordance with new Section 203.03.

⁴ See SR- NYSE-2016-12 (January 25, 2016).

financial statements, and if an FPI is NYSE-listed, it is required to file that information on Form 6-K.

One potentially significant impact of the new rule concerns the NYSE's sanctions for a company that suspends financial reporting, or "goes dark." Any company that fails to file a required interim or annual report must file the delinquent report within six months of the original due date, or risk being delisted (subject to NYSE discretion to extend the compliance period by an additional six months). Until now, a listed FPI that delayed publication of its financial statements would only trigger the suspension and delisting procedures when it failed to file the annual report on Form 20-F. Under the new rule, those procedures will be triggered by the failure to file interim financial information for the first six months of the year.⁵

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⁵ See amendment to NYSE Listed Company Manual Section 802.01E.

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