

March 2, 2016

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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 rule<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> 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.<sup>4</sup> 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

<sup>1</sup> See SEC Release No. 34-77198 (February 19, 2016).

<sup>2</sup> 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.”

<sup>3</sup> 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.

<sup>4</sup> 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.<sup>5</sup>

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CLEARY GOTTLIEB STEEN & HAMILTON LLP

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<sup>5</sup> See amendment to NYSE Listed Company Manual Section 802.01E.

## Office Locations

### NEW YORK

One Liberty Plaza  
New York, NY 10006-1470  
T: +1 212 225 2000  
F: +1 212 225 3999

### WASHINGTON

2000 Pennsylvania Avenue, NW  
Washington, DC 20006-1801  
T: +1 202 974 1500  
F: +1 202 974 1999

### PARIS

12, rue de Tilsitt  
75008 Paris, France  
T: +33 1 40 74 68 00  
F: +33 1 40 74 68 88

### BRUSSELS

Rue de la Loi 57  
1040 Brussels, Belgium  
T: +32 2 287 2000  
F: +32 2 231 1661

### LONDON

City Place House  
55 Basinghall Street  
London EC2V 5EH, England  
T: +44 20 7614 2200  
F: +44 20 7600 1698

### MOSCOW

Cleary Gottlieb Steen & Hamilton LLC  
Paveletskaya Square 2/3  
Moscow, Russia 115054  
T: +7 495 660 8500  
F: +7 495 660 8505

### FRANKFURT

Main Tower  
Neue Mainzer Strasse 52  
60311 Frankfurt am Main, Germany  
T: +49 69 97103 0  
F: +49 69 97103 199

### COLOGNE

Theodor-Heuss-Ring 9  
50688 Cologne, Germany  
T: +49 221 80040 0  
F: +49 221 80040 199

### ROME

Piazza di Spagna 15  
00187 Rome, Italy  
T: +39 06 69 52 21  
F: +39 06 69 20 06 65

### MILAN

Via San Paolo 7  
20121 Milan, Italy  
T: +39 02 72 60 81  
F: +39 02 86 98 44 40

### HONG KONG

Cleary Gottlieb Steen & Hamilton (Hong Kong)  
Hysan Place, 37th Floor  
500 Hennessy Road, Causeway Bay  
Hong Kong  
T: +852 2521 4122  
F: +852 2845 9026

### BEIJING

Cleary Gottlieb Steen & Hamilton LLP  
45th Floor, Fortune Financial Center  
5 Dong San Huan Zhong Lu  
Chaoyang District  
Beijing 100020, China  
T: +86 10 5920 1000  
F: +86 10 5879 3902

### BUENOS AIRES

CGSH International Legal Services, LLP-  
Sucursal Argentina  
Avda. Quintana 529, 4to piso  
1129 Ciudad Autonoma de Buenos Aires  
Argentina  
T: +54 11 5556 8900  
F: +54 11 5556 8999

### SÃO PAULO

Cleary Gottlieb Steen & Hamilton  
Consultores em Direito Estrangeiro  
Rua Funchal, 418, 13 Andar  
São Paulo, SP Brazil 04551-060  
T: +55 11 2196 7200  
F: +55 11 2196 7299

### ABU DHABI

Al Sila Tower, 27<sup>th</sup> Floor  
Abu Dhabi Global Market Square  
Al Maryah Island, PO Box 29920  
Abu Dhabi, United Arab Emirates  
T: +971 2 412 1700  
F: +971 2 412 1899

### SEOUL

Cleary Gottlieb Steen & Hamilton LLP  
Foreign Legal Consultant Office  
19F, Ferrum Tower  
19, Eulji-ro 5-gil, Jung-gu  
Seoul 100-210, Korea  
T: +82 2 6353 8000  
F: +82 2 6353 8099