

## **NYSE Requires Foreign Private Issuers to File Semi-Annual Unaudited Financial Information**

The New York Stock Exchange (“NYSE” or the “Exchange”) has amended its rules to require NYSE listed foreign private issuers to submit a Form 6-K to the Securities and Exchange Commission (“SEC”) containing semi-annual unaudited financial information no later than six months following the end of an issuer’s second fiscal quarter (the “Rule Change”).<sup>1</sup>

The NYSE indicated that the purpose of the Rule Change was to establish a minimum interim reporting regime applicable to all foreign private issuers and did not intend to discourage foreign private issuers from providing more expansive or more frequent interim financial information. The NYSE also indicated that the Rule Change would not relieve companies of the obligation to comply with reporting obligations they may have under the requirements of Form 6-K or home country law or regulation. The SEC indicated that it believed that the Rule Change should help ensure that investors will have, or continue to have, the necessary information to make informed investment decisions for all listed foreign private issuers.<sup>2</sup>

The NYSE’s Rule Change will create a new Section 203.03 of the NYSE Listed Company Manual (the “Manual”) requiring foreign private issuers listed on the NYSE to submit semi-annual unaudited financial information on Form 6-K to the SEC. The semi-annual information required to be filed under Form 6-K under new Section 203.03 must include (i) an interim balance sheet as of the end of an issuer’s second fiscal quarter and (ii) a semi-annual income statement that covers its first two fiscal quarters. The Form 6-K containing these financial reports would be required to be submitted no later than six months following the end of the issuer’s second fiscal quarter. The financial information included in the Form 6-K also must be presented in English and does not need to be reconciled to U.S. GAAP.

The reporting is mandatory for a foreign private issuer listed on the NYSE, irrespective of whether there is a home country requirement to provide interim information. An amendment to Section 103.00 of the Manual clarifies that all NYSE-listed foreign private issuers are required to comply with the new filing requirement despite existing language allowing foreign private issuers to follow home country practice in lieu of complying with NYSE requirements.

The Rule Change also includes an amendment to Section 802.01E of the Manual, treating foreign private issuers listed on the NYSE that fail to timely file semi-annual reports similarly to listed domestic issuers that fail to file timely interim reports. Under amended Section 802.01E, an issuer that fails to file its Form 6-K has an initial six month cure period. If the issuer does not submit all required filings during that initial six-month period, the NYSE will have the ability to allow the issuer an additional six-month period to comply. An issuer that does not become timely with the filing requirements within the compliance periods is subject to delisting.

The Rule Change is effective retroactively from February 5, 2016 and applies to any fiscal year beginning on or after July 1, 2015. This means that the earliest semi-annual period with respect to which a company is required to furnish a Form 6-K under the proposed rule ended on December 31, 2015. Therefore, any listed company will have at least until June 30, 2016 to file the Form 6-K, with the required semi-annual data.

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<sup>1</sup> The SEC approved the Rule Changes on February 19, 2016. See SEC Release No. 34-77198; File No. SR-NYSE-2016-12 (approving the NYSE’s Rule Changes), available at <https://www.sec.gov/rules/sro/nyse/2016/34-77198.pdf>.

<sup>2</sup> The implementation of the Rule Change provides a consistent approach for reporting applicable to foreign private issuers listed on The NASDAQ Stock Market LLC (“Nasdaq”). Foreign private issuers listed on NASDAQ are subject to interim financial reporting requirements under Rule 5250(c)(2) of the Nasdaq Listed Company Manual.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Charles A. Gilman at 212.701.3403 or [cgilman@cahill.com](mailto:cgilman@cahill.com); Jon Mark at 212.701.3100 or [jmark@cahill.com](mailto:jmark@cahill.com); John Schuster at 212.701.3323 or [jschuster@cahill.com](mailto:jschuster@cahill.com); or Lindsay Flora at 212.701.3429 or [lflora@cahill.com](mailto:lflora@cahill.com).

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