

NYSE REVISES RELATED PARTY TRANSACTION APPROVAL RULE

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Companies listed on the New York Stock Exchange should review their policies on related party transactions and related processes to confirm they are consistent with recent revisions to the applicable NYSE rules.

Longstanding NYSE rules required that “an appropriate body” within listed companies review related party transactions, but did not expressly define what constituted a related party transaction. The conventional wisdom was that related party transactions referred to transactions required to be disclosed under Item 404 of Regulation S-K, which generally requires disclosure of transactions in which (i) the amount involved exceeds \$120,000 and (ii) a related party has a direct or indirect material interest.

In April, the Securities and Exchange Commission approved amendments to Section 314.00 of the NYSE Listed Company Manual. The revised NYSE rule expressly:

- Defines a related party transaction as a transaction required to be disclosed under Item 404 of Regulation S-K without applying the \$120,000 threshold thereunder;
- Provides that the audit committee or comparable independent body of the board must conduct an independent prior review of all related party transactions; and
- Requires that the audit committee (or comparable independent body) prohibit related party transactions it determines to be inconsistent with the interests of the company and its shareholders.

As a result of the NYSE’s exclusion of the \$120,000 transaction value threshold, for some companies the scope of related party transactions requiring review and approval by the audit committee under the NYSE rule may be broader than the related party transactions requiring proxy statement disclosure under Item 404. We note, however, that notwithstanding the exclusion of the \$120,000 transaction value threshold, only transactions in which a related party has a direct or indirect material interest are subject to the prior review and approval requirement.

The NYSE will continue to review proxy statements and other SEC filings disclosing related party transactions and, where such transactions continue from year to year, the NYSE will remind the listed company of its obligation, on a continuing basis, to evaluate each related party transaction and determine whether or not it should be permitted to continue.

We encourage NYSE listed companies to review their related party transaction policies and processes to ensure they are consistent with the revised NYSE rule.

RELATED PRACTICE AREAS

- Securities & Corporate Governance

MEET THE TEAM



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