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Final NYSE Rule Change Requiring Semi-Annual Financial Reporting by Foreign Private Issuers

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On February 19, 2016, the U.S. Securities and Exchange Commission (SEC) approved a New York Stock Exchange (NYSE) amendment to its *Listed Company Manual*, requiring each listed foreign private issuer to, at a minimum, submit to the SEC a Form 6-K that includes (i) an interim balance sheet as of the end of its second fiscal quarter; and (ii) a semi-annual income statement that covers its first two fiscal quarters. This Form 6-K must be submitted no later than six months after the end of the company's second fiscal quarter and applies to any fiscal year commencing on or after July 1, 2015. The financial information included in the Form 6-K must be presented in English, but does not have to be reconciled to U.S. generally accepted accounting principles.

In adopting this rule change, the NYSE framed the new section 203.03 of its *Listed Company Manual* as essential to investor protection and a critical update to the prior rule, which mandated only annual financial disclosure. The NYSE also noted that this standard is not as burdensome as requirements already imposed upon domestic issuers, which are required by SEC rules to file Form 10-Q, a quarterly report containing unaudited financial information, within a specified period after the end of each of the company's first, second and third fiscal quarters. The NYSE acknowledged that financial reporting practices in other countries may differ from those in the United States and that not all foreign companies issue interim financial information on a quarterly basis. However, almost all listed foreign private issuers issue interim financial information on at least a semi-annual basis.¹ The NYSE rule change is also consistent with existing rules for foreign private issuers listed on Nasdaq, as Nasdaq Listing Rule 5250(c)(2) requires each Nasdaq-listed foreign private issuer to furnish a Form 6-K to the SEC with an interim balance sheet and income statement as of the end of the foreign private issuer's second quarter.

Under the existing instructions to Form 6-K, a foreign private issuer must furnish to the SEC whatever information not required to be furnished on Forms 20-F or 40-F or not previously furnished it (i) makes or is required to make public pursuant to the law of the jurisdiction of its domicile or in which it is incorporated or organized; or (ii) files or is required to file with a stock

¹ NYSE also amended section 103.00 of the *Listed Company Manual* to clarify that, notwithstanding the provision in that section that allows listed foreign private issuers to follow home country practice in lieu of complying with the NYSE's interim reporting requirements applicable to domestic companies, all listed foreign private issuers will be required to disclose interim financial information on Form 6-K on a semi-annual basis in compliance with proposed section 203.03.

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 securityholders. Accordingly, many issuers (including Canadian issuers that are required by home country practice to file quarterly financial statements) already furnish financial statements to the SEC on Form 6-K more frequently than semi-annually.

In addition, the NYSE made a corresponding change to section 802.01E of its *Listed Company Manual* to subject listed foreign private issuers that have not timely filed the required Form 6-K to the same compliance procedures as are applied to listed companies that are late in filing their annual report on Form 10-Q. Failure to file the required Form 6-K within the period specified by proposed section 203.03 constitutes a Late Filing Delinquency under section 802.01E. As with any other Late Filing Delinquency under that rule, a company that delays filing its Form 6-K will have an initial six-month compliance period (subject to extension at NYSE's discretion) within which to file the Form 6-K and any subsequently due filing. Any company that fails to meet its filing obligations within the compliance periods provided under the rule will be subject to delisting.

If you have any questions regarding the foregoing, please contact [Jeffrey Nadler](mailto:Jeffrey.Nadler@dwpm.com) (212.588.5505) or [Scott D. Fisher](mailto:Scott.D.Fisher@dwpm.com) (212.588.5596) in our New York office.

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