

New York Stock Exchange Further Amends Related Party Transaction Approval Rules

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On August 19, 2021, the New York Stock Exchange (“NYSE”) [proposed](#) an amendment to Section 314.00 of the NYSE Listed Company Manual (the “NYSE Manual”), the NYSE’s related party transaction approval rule. The proposal follows the NYSE’s recent amendments to Section 314.00, [approved](#) by the Securities and Exchange Commission (the “SEC”) on April 2, 2021, which had amended the rules to, among other things, require “reasonable prior review and oversight” of related party transactions and had defined related party transactions (for companies other than foreign private issuers) to be those subject to Item 404 of the SEC’s Regulation S-K, but “without applying the transaction threshold of that provision.” For foreign private issuers, the previous amendments had defined related party transactions to be those subject to disclosure under Form 20-F, but “without regard to the materiality threshold of that provision.” As a result of those amendments, NYSE-listed companies were faced with the prospect of potentially presenting immaterial transactions, or transactions in which related parties’ interests were immaterial, before their independent directors for approval.

In its latest proposal, the NYSE noted that the prior amendment had been intended to “provide greater clarity as to the types of transactions that were specifically subject to review and approval under the rule” but that “[i]n the period since the adoption of that amendment, it has become clear to the Exchange that the amended rule’s exclusion of the applicable transaction value and materiality thresholds is inconsistent with the historical practice of many listed companies, and has had unintended consequences.” As such, the NYSE’s latest amendments to Section 314.00 “provide that the review and approval requirement of that rule will be applicable only to transactions that are required to be disclosed after taking into account the transaction value and materiality thresholds set forth in Item 404 of Regulation S-K or Item 7.B of Form 20-F, respectively, as applicable.” Notably, Item 404 of Regulation S-K only requires disclosure of transactions where the amount involved is greater than \$120,000 and in which the related person “had or will have a direct or indirect material interest” in the transaction. The notes to Item 404 also contain various other exclusions.

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The following Gibson Dunn attorneys assisted in preparing this update: Elizabeth Ising, Ronald Mueller, Cassandra Tillinghast, and Lori Zyskowski.

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Related People

[Elizabeth A. Ising](#)

[Ronald O. Mueller](#)

[Lori Zyskowski](#)

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