

NYSE FURTHER REVISES DEFINITION OF RELATED PARTY TRANSACTIONS

REVERSES POSITION ON \$120,000 THRESHOLD

Aug 26, 2021

On August 19, 2021, the New York Stock Exchange further revised its definition of a “related party transaction” to include the \$120,000 quantitative threshold under Item 404 of SEC Regulation S-K that had been expressly excluded from the definition approved four months earlier.

In April, the Securities and Exchange Commission approved revisions to Section 314.00 of the NYSE Listed Company Manual requiring the audit committee of NYSE listed companies to conduct a reasonable prior review and oversight of all related party transactions for potential conflicts of interest. See NYSE Revises Related Party Transaction Approval Rule. The NYSE rule approved in April defined related party transactions as “transactions required to be disclosed pursuant to Item 404 of Regulation S-K under the Securities Exchange Act (**but without applying the transaction value threshold of that provision**).” As a result of the exclusion of the \$120,000 transaction value threshold from the rule approved in April, the universe of related party transactions requiring review and approval by the audit committee of NYSE listed companies could have been broader than related party transactions requiring proxy statement disclosure under Item 404.

Recognizing this, on August 19, 2021 the NYSE further revised Section 314.00 to *delete* the parenthetical underlined above, thereby providing that the \$120,000 value threshold for disclosure purposes also applies to the prior review and approval requirement under the NYSE rules. The NYSE noted that:

In the period since the adoption of [the April] 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. The Exchange has learned that many listed companies have had a longstanding understanding that they were required to subject related party transactions to the review process required by Section 314.00 only if such transactions exceeded any applicable transaction value or materiality thresholds in the applicable SEC rules and therefore were required to be disclosed. This approach is embodied in the written related party transaction policies of many listed companies.... By not permitting the use of transaction value and materiality thresholds, the amendment to Section

314.00 has had the unintended effect of disrupting the normal course transactions of listed companies. Because of the amendment, many companies have been required to adopt for the first time two separate standards for related party transactions – one for disclosure and another for review and approval of transactions. This has created a significant compliance burden for issuers with respect to small transactions that are considered immaterial for purposes of other regulatory requirements. Furthermore, the Exchange believes that the review and approval of large numbers of immaterial transactions is not an effective use of the time of independent directors who have many other time-consuming oversight obligations with respect to matters that are higher risk and more material to the company.

The revisions to Section 314.00 are effective immediately, although the SEC has the power to temporarily suspend the rule change.

NYSE listed companies which amended their related party transaction policies or other governance documents to delete quantitative thresholds in response to the April revision may wish to revisit such deletions in view of the most recent amendment to Section 314.00.

RELATED CAPABILITIES

- Securities & Corporate Governance

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