UPDATE: NYSE Proposes Additional Changes to Related Party Transactions Rule

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On August 19, 2021, the New York Stock Exchange (NYSE) proposed another amendment to its rule governing the review and approval of “related party transactions” (Rule 314.00) that would fully align the rule with the US Securities and Exchange Commission’s (SEC) related party transactions disclosure rules and the historical practice of many NYSE-listed companies.

As we previously reported, on April 2, 2021, the SEC approved rules changes proposed by the NYSE. Among other changes, the NYSE amended Rule 314.00 to specify that the transactions subject to the review and approval process would be the same transactions that would require disclosure pursuant to Item 404 of...
Regulation S-K or Item 7.B of Form 20-F (for foreign private issuers), as applicable, without regard to the $120,000 transaction value or materiality thresholds in the SEC rules. The exclusion of the transaction value and materiality thresholds by the NYSE was inconsistent with the SEC related party transactions disclosure rules and would have altered the understanding and historical practice of many NYSE-listed companies. Prior to the amendment, the understanding was that Rule 314.00 required the review and approval of only transactions that qualified as related party transactions under applicable SEC disclosure rules, which included the transaction value and materiality thresholds and which understanding was memorialized in the written charters of many NYSE-listed companies.

If the changes to Rule 314.00 were left as approved in April, NYSE-listed companies would have been required to use separate standards for determining related party transactions disclosures required in SEC filings and for the review and approval of related party transactions under Rule 314.00. Furthermore, Rule 314.00, as approved, would have forced audit committees (or comparable bodies performing a similar function) to review and approve transactions (which could be significant in number and fairly burdensome) that were otherwise immaterial for all other regulatory purposes.

The NYSE recognized these unintended consequences and increased burdens on issuers and is seeking SEC approval of the following changes to Rule 314.00 (shown in bold strikethrough):

A company’s audit committee or another independent body of the board of directors, shall conduct a reasonable prior review and oversight of all related party transactions for potential conflicts of interest and will prohibit such a transaction if it determines it to be inconsistent with the interests of the company and its shareholders. For purposes of this rule, the term “related party transaction” refers to 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). In the case of foreign private issuers, the term “related party transactions” refers to transactions required to be disclosed pursuant to Form 20-F, Item 7.B (but without regard to the materiality threshold of that provision).

Note that these changes will be effective immediately but are subject to public comment for 60 days, and can be suspended by the SEC.

These changes will align the transactions that are subject to the review and approval process in Rule 314.00 with the transactions that are subject to the SEC’s related party transactions disclosure requirements. Furthermore, these changes will conform to the historical practice of many NYSE-listed companies and likely eliminate any potential increase in administrative and compliance burdens on issuers and their governing bodies that could have resulted.

If your company already amended its audit committee charter or internal policies and procedures to account for the Rule 314.00 April 2021 changes, consider reviewing those documents again to determine whether further revision is necessary in light of the newly proposed amendment.
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