

# SEC Reporting & Compliance Alert

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## **NYSE Restores Thresholds for Related Party Transactions To Align With SEC Disclosure Requirements**

On August 19, 2021, the New York Stock Exchange (NYSE) filed an immediately effective rule change (Rule Proposal) restoring a transaction value and materiality threshold for related party transactions that require independent directors' review.

The Rule Proposal, filed with the Securities and Exchange Commission (SEC), amended Section 314.00 of the NYSE Listed Company Manual.<sup>1</sup> The Rule Proposal addresses concerns raised by NYSE-listed companies following previous amendments to the listing standard approved by the SEC on April 2, 2021. Those amendments revised Section 314.00 to (i) require the audit committee or another independent body of the board of directors to conduct "a reasonable prior review and oversight" of related party transactions and (ii) defined related party transactions as transactions required to be disclosed pursuant to Item 404 of Regulation S-K or, with respect to foreign private issuers, Item 7.B of Form 20-F. The NYSE's amendments, however, removed the transaction value or materiality thresholds under the respective SEC provisions that excluded small and nonmaterial transactions from the disclosure requirement.<sup>2</sup>

The Rule Proposal reinstates those thresholds so that the scope of related party transactions subject to independent directors' review under Section 314.00 is again aligned with the SEC disclosure rules. The NYSE came to appreciate that removing the thresholds was "inconsistent with the historical practice of many listed companies, and has had unintended consequences" of creating a "significant compliance burden for issuers with respect to small transactions that are considered immaterial for purposes of other regulatory requirements."

As amended by the Rule Proposal, the first paragraph of Section 314.00 reads as follows (with deleted text shown in 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

<sup>1</sup> The amendment was filed as an immediately effective proposed rule, which the SEC may suspend within 60 days of the filing, and is open for public comment.

<sup>2</sup> Item 404 requires disclosure of a transaction involving more than \$120,000 in which a related party had or will have a direct or indirect material interest, unless one of the enumerated exclusions applies. Item 7.B of Form 20-F requires disclosure of transactions that are "material to the company or the related party, or any transactions that are unusual in their nature or conditions" and the amount of outstanding loans (including guarantees) made by the company, its parent or any of its subsidiaries to or for the benefit of a related party.

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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)~~.

As a result of the Rule Proposal, NYSE-listed companies no longer need to identify and submit for independent directors’ review transactions that do not meet the applicable transaction value or materiality thresholds under SEC rules.

NYSE-listed companies should still review their policies and procedures for related party transactions in light of the April 2021 amendment requiring “a reasonable prior review and oversight” by the audit committee or another independent body of the board of directors.

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