

June 2005

Update for Foreign Private Issuers listed on the NYSE

No later than August 30, 2005, each foreign private issuer listed on the NYSE must submit to the Exchange an initial annual Written Affirmation relating to the company's compliance with the NYSE corporate governance standards applicable to foreign private issuers. In February 2005, the NYSE published the form of such affirmation and related instructions, which are available on <http://www.nyse.com> in the Corporate Governance Forms section.

The following Update briefly summarizes the certifications and affirmations to be required of foreign private issuers listed on the NYSE pursuant to Section 303A.12(c) of the NYSE corporate governance standards. Foreign private issuers will be required to provide these documents for the first time during 2005. Domestic listed companies were first required to provide these documents in 2004.

Background

As all companies listed on the NYSE should by now know, they are subject to corporate governance standards under the modifications to the listing rules prompted by the Sarbanes-Oxley Act and related SEC rulemaking. Foreign private issuers are subject to only one substantive provision (the independent audit committee requirements of Section 303A.06) and three disclosure provisions. The first of these disclosure provisions calls for disclosure of the significant ways in which its corporate governance practices differ from those that are required of US listed companies (Section 303A.11). The second calls for disclosure of non-compliance (Section 303A.12(b)). The third calls for annual and interim reporting to the NYSE, which we discuss below (Section 303A.12(c)).

Required Submissions

Annual Written Affirmation

Foreign private issuers listed on the NYSE are exempt from Rule 303A.12(a), which requires the CEO of a domestic registrant to certify to the NYSE each year that he or she is not aware of any violation by the company of the NYSE corporate governance standards. However, pursuant to Section 303A.12(c), foreign private issuers are required to submit to the Exchange an annual Written Affirmation relating

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to compliance with Sections 303A.06 and 303A.11, the NYSE corporate governance standards applicable to foreign private issuers.

The Affirmation tracks the Rule 303A requirements, and also has a set of exhibits on which listed foreign private issuers must provide a series of responses. For example, foreign private issuers must provide the name of each audit committee member, and with respect to each audit committee member who is also a director of the company, they must provide a brief biography, including disclosure on share ownership in the company and a brief description of any existing business relationships and/or fee arrangements with the company, if applicable.

In 2005, each foreign private issuer listed on the NYSE must submit to the Exchange an initial annual Written Affirmation no later than 30 days after July 31, 2005 (August 30, 2005). In subsequent years, the annual Written Affirmation must be submitted within 30 days of the foreign private issuer's filing of its annual report on Form 20-F or 40-F (or 10-K if it follows the domestic reporting convention) with the SEC.

Interim Written Affirmation

Pursuant to Section 303A.12(c), a foreign private issuer is also required to promptly submit to the NYSE an interim Written Affirmation in the form provided by the Exchange when:

- an audit committee member who was deemed independent is no longer independent;
- a member has been added to the audit committee; or
- the company is no longer eligible to rely on, or has chosen to no longer rely on, a previously applicable exemption to the audit committee independence rules.

In 2005, a foreign private issuer should not file any interim Written Affirmation until after it has submitted its initial annual Written Affirmation.

Form of Written Affirmation

All Written Affirmations, annual or interim, must be executed in the form provided by the NYSE, without modification. The NYSE has expressly stated that it will not accept Written Affirmations that have been retyped or modified, or if any text has been deleted. Exhibits to the Written Affirmations may be typed "free form" on company letterhead, with the exception of Exhibit B to the annual Written Affirmation. (Exhibit B to the annual Written Affirmation addresses location of disclosure as to any exemptions relied upon from the audit committee independence rules and the location of disclosure as to the differences between the company's corporate governance practices and those that would apply if the company were a US reporting company.)

All required Exhibits must note the company's name and be included with the Written Affirmation when it is submitted.

If a foreign private issuer is out of compliance with any requirements of Section 303A.06 or 303A.11 as of the date it submits a Written Affirmation, annual or interim, the Written Affirmation must be submitted with a "check mark" (or "tick mark") in the appropriate box indicating the failure of compliance. In addition, the Written Affirmation must be accompanied by disclosure noting the standard with which the foreign private issuer is out of compliance, the reason for non-compliance, and a specific timetable for the company's return to compliance.

As noted above, pursuant to Section 303A.12(b), a listed company CEO must also promptly notify the NYSE of any non-compliance with Sections 303A.06 and 303A.11. If a company has submitted an interim Written Affirmation relating to a specific event of non-compliance, there is no need to also submit a Section 303A.12(b) notice signed by the CEO if the interim Written Affirmation was signed by the CEO. If, however, the interim Written Affirmation was not signed by the CEO, a Section 303A.12(b) notice signed by the CEO will be required to be separately submitted to the NYSE.

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This memorandum is not intended to provide legal advice with respect to any particular situation and no legal or business decision should be based solely on its content. Questions concerning issues addressed in this memorandum should be directed to any member of the Paul Weiss Securities Group, including:

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