

NYSE Revises Listing Standards; Eliminates the Annual Report Physical Delivery Requirements

September 5, 2006

On August 21, 2006, the Securities and Exchange Commission approved changes to the New York Stock Exchange Listed Company Manual ([Release No. 34-54344](#); [SR-NYSE-2005-68](#)), which, among other things, eliminate the NYSE requirement that annual reports be physically delivered to shareholders.

This rule change does not affect the SEC's current requirement contained in Rule 14a-3(b) that an annual meeting proxy statement be accompanied or preceded by an annual report. Therefore, U.S. companies and other companies that are subject to U.S. proxy regulations still must deliver paper copies of their annual reports to shareholders. However, this rule change permits foreign private issuers who are exempt from U.S. proxy rules and are not otherwise required to physically deliver an annual report to shareholders to save the significant costs associated with physical delivery of the annual report. In December 2005, the SEC proposed amendments to its proxy rules that would permit issuers and other persons to post proxy materials and annual reports on a website if they provide shareholders with notice of the availability of such proxy materials, with physical copies made available to shareholders upon request at no cost ([Release No. 34-52926](#)), but the SEC has not taken final action on this proposed change to the proxy rules. If the SEC approves this rule substantially as proposed, NYSE-listed companies that are subject to the U.S. proxy regulations will also be able to benefit from the significant cost savings associated with the physical delivery of documents to shareholders.

The rule change amended Section 203.01 of the NYSE Listed Company Manual to require a listed company to simultaneously post on its corporate website the company's annual report on Form 10-K, 20-F, 40-F or N-CST when it is filed with the SEC. Companies must also post to their website a prominent undertaking, in English, to provide all holders

(including preferred stockholders and bondholders) the ability, upon request, to receive a hard copy of the company's complete audited financial statements, free of charge. Simultaneously with posting the annual report on the website, the listed company must issue a press release announcing that it has filed its annual report with the SEC. This press release must specify the company's website address and indicate that shareholders have the ability to receive a hard copy of the listed company's complete audited financial statements free of charge upon request within a reasonable time period. Additional changes that were made to Section 203.01 of the NYSE Listed Company Manual eliminated the following provisions: (i) that a company inform the NYSE if it is unable to file its annual report with the SEC in a timely manner, (ii) that a company notify the NYSE prior to the filing deadline if it will not file its annual report with the SEC on time, as well as the language setting out the date by which a company must distribute its annual report once the late annual report has been filed with the SEC, (iii) the NYSE's requirements regarding the contents of annual reports and annual financial statements, and (iv) requirements regarding the publication and distribution of annual financial statements.

Section 203.02 of the NYSE Listed Company Manual has been amended to consolidate and summarize the NYSE's reporting requirements for interim financials. Companies with common equity securities listed on the NYSE that are required to file interim financial statements with the SEC must issue an interim earnings press release as soon as their interim financial statements are available. While the NYSE does not require that the interim reports be sent to shareholders, as a matter of fairness, if a company distributes interim reports to shareholders, it must distribute such reports to both registered and beneficial shareholders. Section 203.02 of the NYSE Listed Company Manual has also been revised to eliminate those provisions that, similar to the

annual report described above, are no longer applicable or that do not contain actual listing requirements.

Section 103.00 of the NYSE Listed Company Manual was amended, eliminating the requirement that foreign private issuers distribute at least a summary annual report to shareholders, provide a full annual report to shareholders upon request and contact an NYSE representative to determine whether the proposed use of a summary annual report meets the NYSE requirements. Section 103.00 of the NYSE Listed Company Manual has also been revised to eliminate those non-substantive provisions that do not contain actual listing requirements.

Also as part of these amendments, Section 204.00 of the NYSE Listed Company Manual was revised to limit the need to provide information to the NYSE that is available on EDGAR. Specifically, the only copies that need to be delivered to the NYSE are:

- One hard copy of materials necessary to support a listing application;
- Six hard copies of proxy materials not later than the date on which the material is physically or electronically delivered to shareholders;
- One hard copy of any filings made on Form 6-K that are not required to be filed through EDGAR not later than the date on which the Form 6-K is filed with the SEC; and
- One hard copy of a notice to shareholders with respect to any proposed amendments to the company's charter, as well as a certified copy of the amended charter along with a letter of transmittal indicating the sections amended since the previous filing of amendments or amended documents, promptly following the date that the notice is given or the charter is amended. A similar procedure should be followed with respect to resolutions of the board of directors, or any certificate or

other document, having the effect of an amendment to the charter or by-laws.

A new Section 303A.14 has been added to the NYSE Listed Company Manual requiring listed companies to have and maintain a publicly accessible website. (If the listed company is a closed-ended fund that does not maintain its own website, that company may use a website of its investment advisor, sponsor, depositor, trustee, administrator, principal underwriter or any affiliated person if that website includes the name of the listed company.) Also, the various website requirements contained in other sections of 303A of the NYSE Listed Company Manual have been included in this new Section 303A.14.

Section 401.04 of the NYSE Listed Company Manual, which provided guidance on the interval between the fiscal year end and the date of the annual meeting, has been eliminated, although the NYSE and the SEC both stated that best practice is for a listed company to hold its annual meeting within a reasonable time after the close of its fiscal year.

Finally, Section 703.09 of the NYSE Listed Company Manual has been amended to eliminate requirements relating to the disclosure of number of the outstanding options, changes in the number of outstanding shares and other similar requirements since these provisions duplicate disclosure requirements for companies that are more fully described in the Securities Exchange Act of 1934.

If you have any questions regarding these changes, we would be pleased to discuss them with you. For more information, please contact any of the attorneys listed at the end of this Securities Update or any other member of our corporate and securities group. If you would prefer to receive distributions electronically and are not receiving them that way now, please send your e-mail address to mnoonan@mayerbrownrowe.com or cblackmond@mayerbrownrowe.com.

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