

# NYSE listing requirements now include publication of semi-annual financial information

The New York Stock Exchange ("**NYSE**") recently amended its Listed Company Manual to require listed foreign private issuers to submit their semi-annual financial information to the U.S. Securities and Exchange Commission (the "**SEC**") on Form 6-K. While most foreign private issuers listed on the NYSE already report their mid-year results to investors, the NYSE's change makes this practice mandatory. Nasdaq-listed foreign private issuers are subject to a similar listing requirement.

**New Section 203.03 of the NYSE Listed Company Manual (the "Manual") requires each NYSE-listed foreign private issuer to submit to the SEC a report on Form 6-K that includes:**

- an interim balance sheet as of the end of its second fiscal quarter; and
- a semi-annual income statement that covers its first two fiscal quarters.

This interim financial information may be unaudited, may be presented in a currency other than US dollars and need not be presented in, or reconciled to US GAAP. This new NYSE rule is substantially the same as Nasdaq's interim financial reporting requirement.<sup>1</sup>

The NYSE's new reporting requirement applies to the first half of any fiscal year commencing on or after July 1, 2015. Accordingly, a foreign private issuer that is listed on either NYSE or Nasdaq and that reports using a fiscal year that commences on January 1 must submit to the SEC on Form 6-K a balance sheet as of June 30, 2016 and an income statement for the first six months of 2016.

To comply with US federal securities law, a foreign private issuer must furnish a report on Form 6-K using EDGAR (the SEC's electronic filing system) promptly after the information contained in the report is made public. For purposes of remaining in compliance with the ongoing listing requirements, the report on Form 6-K must be filed no later than six months following the end of the company's second fiscal quarter.

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<sup>1</sup> Nasdaq Rule 5250(b)(2) provides: "Each Foreign Private Issuer shall submit on a Form 6-K an interim balance sheet and income statement as of the end of its second quarter. This information, which must be presented in English, but does not have to be reconciled to U.S. GAAP, must be provided no later than six months following the end of the Company's second quarter."

The NYSE has amended Section 802.01E of the Manual to subject non-U.S. issuers that are late in reporting their semi-annual financial information to the same consequences as U.S. domestic companies that are late in filing their quarterly reports on Form 10-Q. If an NYSE-listed foreign private issuer fails to timely submit its semi-annual financial information to the SEC on Form 6-K, this would constitute a late filing delinquency. The same consequences apply to foreign private issuers listed on Nasdaq.

The following table provides examples for the dates on which a report on Form 6-K providing semi-annual financial information will be due for a range of fiscal year start dates.

For a fiscal year that begins on	Form 6-K to provide		Form 6-K deadline for listing compliance
	Balance sheet as of	Income statement covering	
July 1, 2015	Dec. 31, 2015	Six months ended Dec. 31, 2015	June 30, 2016
Oct. 1, 2015	March 30, 2016	Six months ended March 30, 2016	Sept. 30, 2016
Jan. 1, 2016	June 30, 2016	Six months ended June 30, 2016	Dec. 31, 2016
April 1, 2016	Sept. 30, 2016	Six months ended Sept. 30, 2016	March 30, 2017

Depending on circumstances, the listing staff of the NYSE and Nasdaq may grant companies additional time to regain compliance with these financial reporting obligations before making a delisting determination.

## Conclusion

The NYSE has changed its listing rules to require that all NYSE-listed foreign private issuers submit their semi-annual financial information to the SEC on Form 6-K is expected to promote uniformity in practice. Nasdaq-listed foreign private issuers have already been required to comply with a substantially similar rule. For companies that have been regularly publishing semi-annual financial statements, this rule change presents little if any additional compliance burden. For companies that have not been reporting their interim financial results, compliance with this rule change may involve significant management time and effort.

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