

# SEC UPDATE



## **SEC Proposes for Comment NYSE Rule Changes Relating to Annual Financial Statement Distribution Requirements and Certain Other Listed Company Manual Provisions**

On June 21, 2006, the SEC proposed for public comment proposed rule changes submitted by the NYSE. The proposed rule changes are designed to streamline substantive requirements that in many cases overlap with SEC requirements and to better reflect the general move toward the “access-equals-delivery” model for dissemination of disclosure documents.

The proposed rule changes would:

- Eliminate the current requirement that listed companies distribute an annual report to shareholders. Instead, companies with listed voting or non-voting common securities are to satisfy the financial statement distribution requirement by making their annual reports on Form 10-K, 20-F, 40-F or N-CSR available on their websites. This rule change would not affect the SEC’s requirements under Rule 14a-3 to distribute annual reports in connection with an annual meeting (though recent SEC proposals for web-based delivery are consistent with the NYSE proposal) or the SEC’s rules as to timing of proxy statements relative to the applicable shareholders meeting.
- Require, as part of the elimination of the requirement to distribute annual reports, companies to post on their websites a prominent undertaking in English to deliver a paper copy of the company’s complete audited financial statements free of charge to any shareholder who requests it. They will also be required to issue a press release stating that the annual report has been filed with the SEC and indicating that shareholders have the ability to receive a hard copy of the complete audited financial statements free of charge upon request within a reasonable period of time.
- Require listed companies to have and maintain a website. This provision would also collect in one place all of the information required under Section 303A to be posted on a website (i.e., charters for the audit, compensation and nominating committees, corporate governance guidelines and codes of business conduct and ethics, and in the case of foreign private issuers the disclosure (in English and accessible from the United States) of how their corporate governance practices differ from Section 303A standards).

- Require any company with listed voting or non-voting common securities that is required to file interim financial statements (i.e., domestic issuers) to issue an earnings release as soon as the interim financial statements are available. Interim reports do not have to be mailed to shareholders.
- Eliminate the requirement that foreign private issuers distribute to shareholders at least a summary annual report that includes summary financial information reconciled to US GAAP and provide a full annual report to shareholders upon request. Instead foreign private issuers would post their annual reports on Form 20-F or 40-F on their website and would provide hard copies of the full audited, US GAAP or US GAAP-reconciled, financial statements to shareholders upon request within a reasonable period of time.
- Eliminate the requirement that a listed company inform the NYSE if it is unable to file its annual report with the SEC in a timely manner.
- Eliminate the requirement that a listed company provide the NYSE with copies of press releases and shareholder communications.
- Eliminate the requirement that a listed company notify the NYSE prior to the filing deadline if it will not file its annual report with the SEC on time.
- Streamline the filing requirements with the NYSE, such that only the following would be filed: materials in support of listing applications (one hard copy); proxy materials (six hard copies); filings made on Form 6-K that are not required to be filed via EDGAR (one hard copy) and notices to shareholders in connection with charter amendments, together with a certified copy of the charter and a letter of transmittal indicating the amended sections, with similar requirements for board resolutions and other certificates or documents having the effect of amending the charter or by-laws (one hard copy).
- Eliminate the “best practice” guidance on the proper interval between the close of a fiscal year and the annual shareholders meeting.

The complete text of the proposed amendments is available on the NYSE’s website (<http://www.nyse.com>) and the complete text of the notice (including the proposed new language to the NYSE Listed Company Manual is available on the SEC website at ([www.sec.gov](http://www.sec.gov)) (Release No. 34-54029; File No. SR-NYSE-2005-68).

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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