



Securities Law ADVISORY ■

MAY 6, 2021

SEC Approves NYSE Amendments to Related Party Transactions Policies

On April 2, 2021, the Securities and Exchange Commission approved amendments to the NYSE Listed Company Manual to revise the requirements for related party transactions in Section 314.00 and the shareholder approval requirements in Sections 312.03 and 312.04. These changes will require heightened scrutiny and responsibility for related party transaction approvals and relax current requirements relating to obtaining shareholder approval before certain equity issuances.

Guidance on Review and Pre-Approval of Related Party Transactions

Definition of related party transaction

NYSE rules had not defined the term “related party transaction,” so companies had long interpreted it to have the meaning specified in Item 404 of Regulation S-K, which requires disclosure of transactions in which the transaction amount exceeds \$120,000, the registrant was or is to be a participant, and the related party had or will have a direct or indirect material interest. The NYSE previously had not specified who should review these related party transactions. The amendments to Section 314.00 of the Manual provide some clarity, stating that the term “related party transaction” refers to transactions required to be disclosed pursuant to Item 404 of Regulation S-K but the transaction value threshold under Item 404 will *not* apply.

Prior approval of all related party transactions is required

The amendments also specify that a company’s audit committee or another independent body of the board of directors shall conduct a reasonable *prior* review of related party transactions for potential conflicts of interest and prohibit a transaction only if it determines the transaction to be inconsistent with the interests of the company and its shareholders. Transactions required to be reviewed under Section 314.00 are those transactions in which a related party has or will have a direct or indirect material interest – the standard for disclosure under Item 404. Accordingly, small transactions, where there is no such material interest, will not require prior audit committee approval.

This advisory is published by Alston & Bird LLP to provide a summary of significant developments to our clients and friends. It is intended to be informational and does not constitute legal advice regarding any specific situation. This material may also be considered attorney advertising under court rules of certain jurisdictions.

Changes to internal company processes

These new rules result in increased responsibility on the part of a company's audit committee or other independent body in its review of related party transactions before entering a related party transaction (ratification will not suffice). Given these changes, companies should (1) consider whether any changes to internal processes are necessary to ensure any required audit committee approval is done in advance; and (2) consider whether amendments to related party transaction policies and audit committee charters are necessary to reflect the new review requirements under Section 314.00.

Changes to Shareholder Approval Requirement for Related Party Issuances

The amendments to Section 312.03 of the Manual expand the circumstances under which a company may sell shares to a related party without first obtaining shareholder approval. Section 312.03(b) as amended requires prior shareholder approval for certain issuances of common stock to directors, officers, and substantial security holders of the company and no longer requires such approval for issuances to these parties' subsidiaries, affiliates, or other closely related persons.

In addition, Section 312.03(b) now requires shareholder approval of cash sales to related parties only if the price is less than the current market price. Issuances to related parties in non-cash transactions and cash sales to related parties for prices below the current market price relating to more than 1% of the issuer's common stock or voting power outstanding will continue to be subject to shareholder approval. It is important to note that in accordance with Section 312.03(b)(ii), shareholder approval is required in any transaction if a related party has a 5% interest in the company or assets being acquired with the share issuance (or related parties collectively have a 10% interest) when the issuance could result in an increase of 5% or more in either the number of shares of common stock or voting power outstanding.

Other NYSE rules pertaining to shareholder approval for the issuance of shares remain unchanged.

You can subscribe to future *Securities* advisories and other Alston & Bird publications by completing our [publications subscription form](#).

If you would like more information, please feel free to contact one of the attorneys in our [Securities Group](#).

ALSTON & BIRD

WWW.ALSTON.COM

© ALSTON & BIRD LLP 2021

ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777
BEIJING: Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghua Road ■ Chaoyang District ■ Beijing, 100004 CN ■ +86 10 8592 7500
BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719
CHARLOTTE: One South at The Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
DALLAS: Chase Tower ■ 2200 Ross Avenue ■ Suite 2300 ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
FORT WORTH: 3700 Hulen Street ■ Building 3 ■ Suite 150 ■ Fort Worth, Texas, USA, 76107 ■ 214.922.3400 ■ Fax: 214.922.3899
LONDON: 5th Floor, Octagon Point, St. Paul's ■ 5 Cheapside ■ London, EC2V 6AA, UK ■ +44.0.20.3823.2225
LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100
NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
RALEIGH: 555 Fayetteville Street ■ Suite 600 ■ Raleigh, North Carolina, USA, 27601-3034 ■ 919.862.2200 ■ Fax: 919.862.2260
SAN FRANCISCO: 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ 415.243.1000 ■ Fax: 415.243.1001
SILICON VALLEY: 1950 University Avenue ■ Suite 430 ■ East Palo Alto, California, USA 94303 ■ 650.838.2000 ■ Fax: 650.838.2001
WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.239.3300 ■ Fax: 202.239.3333