

NYSE Proposes to Amend Its Listing Standards Related to Delinquent Filings

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The NYSE has [proposed](#) to amend its listing requirements related to a company filing delinquent reports with the SEC. The proposal expands the NYSE's existing late filer rule to include Form 10-Qs, clarifies how the NYSE will treat companies whose annual or quarterly reports are defective at the time of filing or become defective later, and establishes further procedures for handling these delinquencies.

Currently, the rule only applies to late annual reports (Form 10-K, 20-F or 40-F). The proposal would add Form 10-Qs to its late filing rules, so that a company would be considered a delinquent filer once it misses the deadline of a Form 10-Q or annual report. In addition to past due quarterly or annual reports, the NYSE also considers any of the following events as delinquent filings: an annual report is filed without an audit report; the auditor withdraws its audit report or the company files a Form 8-K disclosing that a previously filed audit report should no longer be relied upon; or the company files a Form 8-K or Form 6-K disclosing that previously issued financial statements should no longer be relied upon and does not correct them within 60 days (the date may be earlier if the NYSE determines that corrections are unlikely or the errors are severe).

A company that met the original filing deadline but whose Form 10-Q or annual report contains a material deficiency, as determined by the NYSE, is also considered a late filer. Some of the examples that would make a filing deficient for this purpose include: if the filing does not include the required financial statements or a required audit opinion; an audit opinion includes qualifying or disclaiming language or the auditor provides an adverse audit opinion; an audit opinion is unsigned or undated; signatures or certifications are missing; or the auditor has not conducted a SAS 100 review for the Form 10-Q.

The NYSE will notify a company once it believes any of the above filing deficiencies occurred. Within five days, the company must contact the NYSE and issue a press release disclosing that they have been made aware of the deficiency by the NYSE and any known anticipated date for fixing the problem. For six months from the date of the deficiency, the NYSE will monitor the company until there is a cure. After that period, the NYSE may either allow the securities to continue to be traded for up to an additional six-month period or will commence suspension and delisting procedures.

Under the proposal, the NYSE can also decide, in its sole discretion, not to allow for any cure period or shorten those periods, and immediately commence suspension and delisting, for reasons including: allegations of financial fraud or illegal actions related to a company's financial reporting; the resignation or termination by the company of the company's auditor due to a disagreement; an extended delay in appointing a new auditor after a prior auditor's resignation or termination; the resignation of directors, including audit committee members; the resignation or termination of key executives; evidence that it may be impossible for the company to cure its delinquencies within the requisite time periods; or any past history with late filings.

The proposal has been filed with the SEC and is awaiting comments.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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