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NYSE MKT Company Guide

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Sec. 110. SECURITIES OF FOREIGN COMPANIES

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(d) *Disclosure*—The Exchange will require the company to: (i) comply with the annual report publication requirements set forth in Section 610(a) below[, and (ii) publish, at least semi-annually, an English language version of its interim financial statements].

(e) Each listed foreign private issuer must, at a minimum, submit to the SEC a Form 6-K that includes (i) an interim balance sheet as of the end of its second fiscal quarter and (ii) a semi-annual income statement that covers its first two fiscal quarters. This Form 6-K must be submitted no later than six months following the end of the company's second fiscal quarter. The financial information included in the Form 6-K must be presented in English, but does not have to be reconciled to U.S. GAAP.

(f) *Form of Listing Application*—§§220-222.

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Sec. 610. PUBLICATION OF ANNUAL REPORT

(a) Any listed company that is required to file with the SEC an annual report that includes audited financial statements (including on Forms 10-K, 20-F, 40-F or N-CSR) is required to simultaneously make such annual report available to shareholders of such securities on or through the company's website. [The company must disclose in its annual report to security holders, for the year covered by the report: (a) the number of unoptioned shares available at the beginning and at the close of the year for the granting of options under an option plan; and (b) any changes in the exercise price of outstanding options, through cancellation and reissuance or otherwise, except price changes resulting from the normal operation of anti-dilution provisions of the options.]

A company must also post to its website a prominent undertaking in the English language 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 and simultaneously issue a press release stating that its annual report has been filed with the SEC. This press release must also specify the company's website address and indicate that shareholders have the ability to receive a hard copy of

the company's complete audited financial statements free of charge upon request. The company must provide such hard copies within a reasonable period of time following the request. Moreover, the press release must be published pursuant to the Exchange's press release policy (see Section 401 above).

A listed company that:

- is subject to the U.S. proxy rules that provides its audited financial statements (as included on Forms 10-K, 20-F and 40-F) to beneficial shareholders in a manner that is consistent with the physical or electronic delivery requirements applicable to annual reports set forth in Rules 14a-3 and 14a-16 of the U.S. proxy rules, or
- is an issuer not subject to the U.S. proxy rules that provides its audited financial statements (as included on Forms 10-K, 20-F and 40-F) to beneficial shareholders in a manner that is consistent with the physical or electronic delivery requirements applicable to annual reports set forth in Rules 14a-3 and 14a-16 of the U.S. proxy rules,

is not required to issue the press release or post the undertaking required above. A company that fails to file its annual report on Forms 10-K, 20-F, 40-F or N-CSR with the SEC in a timely manner is subject to the compliance procedures set forth in Section 1007 [delisting pursuant to Section 1002(d)].

(b) A listed company that receives an audit opinion that contains a going concern [qualification] emphasis must make a public announcement through the news media disclosing the receipt of such [qualified] opinion. Prior to the release of the public announcement, the listed company must provide such announcement to the Exchange['s StockWatch and Listing Qualifications Departments] in a manner consistent with the requirements for the provision of material news to the Exchange under Sections 401 and 402 hereof.* The public announcement shall be made [as promptly as possible, but not more than seven calendar days following] contemporaneously with the filing of such audit opinion in a public filing with the Securities and Exchange Commission.

* Notification should be provided to the Exchange's [StockWatch Department] Market Watch Group [at (212) 306-8383 (telephone), (212) 306-1488 (facsimile), and to the Listing Qualifications Department at (212) 306-1331 (telephone), (212) 306-5325 (facsimile)] pursuant to the material news notification requirements of Sections 401 and 402.

Sec. 611.[TIME OF PUBLICATION

Annual reports must be submitted to shareholders and filed with the Exchange at least ten days in advance of the annual meeting of shareholders, and not later than four months after the close of the last preceding fiscal year of the company.] Reserved.

Sec. 612. [REQUEST FOR EXTENSION

If, due to circumstances beyond a company's control, it becomes impossible to furnish shareholders with the required annual report within four months after the end of the company's fiscal year, the company should request an extension of time in which to distribute its annual report, and set forth the basis for its request (see §613). The request should be in the form of a letter directed to the Exchange as soon as it has been determined that the annual report cannot be distributed on time and, in any event, at least two weeks before the four months have expired. (A similar request must also be made of the SEC on Form 12b-25 in connection with annual reports on Form 10-K.)

The Exchange may grant the request if: (a) there is a good cause for the delay, (b) the company has had a record of filing annual reports on time in the past, and (c) the lack of information as to the financial condition of the company does not warrant a halt or suspension of trading. If the Exchange, for any reason, does not grant the request, the securities of the company are subject to possible halt or suspension from dealings after the expiration of the four month period.] Reserved.

Sec. 613. [GOOD CAUSE FOR DELAY

Good cause for delay in the publication of an annual report includes: catastrophes such as a fire, flood, war, destruction of a company's records; or unavoidable regulatory delays such as a pending review by the SEC of financial statements in a preliminary prospectus or proxy statement.

Failure to retain auditors in time, shortages of personnel, or other avoidable reasons, do not generally constitute good cause for a delay. In addition, failure to clear a proxy statement in time to mail it with the annual report is not considered a good cause for a delay beyond the four month period for the mailing of the annual report.] Reserved.

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Sec. 1007 SEC ANNUAL AND QUARTERLY REPORT TIMELY FILING CRITERIA

Occurrence of a Filing Delinquency

For purposes of remaining listed on the Exchange, a company will incur a late filing delinquency and be subject to the procedures set forth in this Section 1007 on the date on which any of the following occurs:

- the company fails to file its annual report (Forms 10-K, 20-F, 40-F or N-CSR) or its quarterly report on Form 10-Q or semi-annual report on Form N-CSR (“Semi-Annual Form N-CSR”) with the SEC by the date such report was required to be filed by the applicable form, or if a Form 12b-25 was timely filed with the SEC, the extended filing due date for the annual report, Form 10-Q, or Semi-Annual Form N-CSR for purposes of this Section 1007, the later of these two dates, along with any Semi-Annual Report Filing Due Date as defined below, will be referred to as the

"Filing Due Date" and the failure to file a report by the applicable Filing Due Date, a "Late Filing Delinquency");

- a listed foreign private issuer fails to file the Form 6-K containing semi-annual financial information required by Section 110(e) hereof (the "Semi-Annual Report") by the date specified in that rule (the "Semi-Annual Report Filing Due Date");
- the company files its annual report without a financial statement audit report from its independent auditor for any or all of the periods included in such annual report (a "Required Audit Report" and the absence of a Required Audit Report, a "Required Audit Report Delinquency");
- the company's independent auditor withdraws a Required Audit Report or the company files a Form 8-K with the SEC pursuant to Item 4.02(b) thereof disclosing that it has been notified by its independent auditor that a Required Audit Report or completed interim review should no longer be relied upon (a "Required Audit Report Withdrawal Delinquency"); or
- the company files a Form 8-K with the SEC pursuant to Item 4.02(a) thereof to disclose that previously issued financial statements should no longer be relied upon because of an error in such financial statements or, in the case of a foreign private issuer, makes a similar disclosure in a Form 6-K filed with the SEC or by other means (a "Non-Reliance Disclosure") and, in either case, the company does not refile all required corrected financial statements within 60 days of the issuance of the Non-Reliance Disclosure (an "Extended Non-Reliance Disclosure Event" and, together with a Late Filing Delinquency, a Required Audit Report Delinquency and a Required Audit Report Withdrawal Delinquency, a "Filing Delinquency") (for purposes of the cure periods described below, an Extended Non-Reliance Disclosure Event will be deemed to have occurred on the date of original issuance of the Non-Reliance Disclosure); if the Exchange believes that a company is unlikely to refile all required corrected financial statements within 60 days after a Non-Reliance Disclosure or that the errors giving rise to such Non-Reliance Disclosure are particularly severe in nature, the Exchange may, in its sole discretion, determine earlier than 60 days that the applicable company has incurred a Filing Delinquency as a result of such Non-Reliance Disclosure.

The Exchange will also deem a company to have incurred a Filing Delinquency if the company submits an annual report, Form 10-Q, or Semi-Annual Form N-CSR to the SEC by the applicable Filing Due Date, but such filing fails to include an element required by the applicable SEC form and the Exchange determines in the Exchange's sole discretion that such deficiency is material in nature.

The annual report, Form 10-Q, Semi-Annual Form N-CSR or Semi-Annual Report that gives rise to a Filing Delinquency shall be referred to in this Section 1007 as the "Delinquent Report."

Subsequent Late Reports

A company that has an uncured Filing Delinquency will not incur an additional Filing Delinquency if it fails to file a subsequent annual report, Form 10-Q, Semi-Annual Form N-CSR or Semi-Annual Report (a "Subsequent Report") by the applicable Filing Due Date for such Subsequent Report. However, in order for the company to cure its initial Filing Delinquency, no Subsequent Report may be delinquent or deficient on the date by which the initial Filing Delinquency is required to be cured.

Notification and Cure Periods

Upon the occurrence of a Filing Delinquency, the Exchange will promptly send written notification (the "Filing Delinquency Notification") to a company of the procedures set forth below. Within five days of the date of the Filing Delinquency Notification, the company will be required to (a) contact the Exchange to discuss the status of the Delinquent Report and (b) issue a press release disclosing the occurrence of the Filing Delinquency, the reason for the Filing Delinquency and, if known, the anticipated date such Filing Delinquency will be cured via the filing or refiling of the applicable report, as the case may be. If the company has not issued the required press release within five days of the date of the Filing Delinquency Notification, the Exchange will issue a press release stating that the company has incurred a Filing Delinquency and providing a description thereof.

During the six-month period from the date of the Filing Delinquency (the "Initial Cure Period"), the Exchange will monitor the company and the status of the Delinquent Report and any Subsequent Reports, including through contact with the company, until the Filing Delinquency is cured. If the company fails to cure the Filing Delinquency within the Initial Cure Period, the Exchange may, in the Exchange's sole discretion, allow the company's securities to be traded for up to an additional six-month period (the "Additional Cure Period") depending on the company's specific circumstances. If the Exchange determines that an Additional Cure Period is not appropriate, suspension and delisting procedures will commence in accordance with the procedures set out in Section 1010 hereof. A company is not eligible to follow the procedures outlined in Section 1009 with respect to these criteria. Notwithstanding the foregoing, however, the Exchange may in its sole discretion decide (i) not to afford a company any Initial Cure Period or Additional Cure Period, as the case may be, at all or (ii) at any time during the Initial Cure Period or Additional Cure Period, to truncate the Initial Cure Period or Additional Cure Period, as the case may be, and immediately commence suspension and delisting procedures if the company is subject to delisting pursuant to any other provision of the company Guide, including if the Exchange believes, in the Exchange's sole discretion, that continued listing and trading of a company's securities on the Exchange is inadvisable or unwarranted in accordance with Sections 1001-1006 hereof. The Exchange may also commence suspension and delisting procedures without affording any cure period at all or at any time during the Initial Cure Period or Additional Cure Period if the Exchange believes, in the Exchange's sole discretion, that it is advisable to do so on the basis of an analysis of all relevant factors, including but not limited to:

- whether there are allegations of financial fraud or other illegality in relation to the company's financial reporting;
- the resignation or termination by the company of the company's independent auditor due to a disagreement;
- any extended delay in appointing a new independent auditor after a prior auditor's resignation or termination;
- the resignation of members of the company's audit committee or other directors;
- the resignation or termination of the company's chief executive officer, chief financial officer or other key senior executives;
- any evidence that it may be impossible for the company to cure its Filing Delinquency within the cure periods otherwise available under this rule; and
- any past history of late filings.

In determining whether an Additional Cure Period after the expiration of the Initial Cure Period is appropriate, the Exchange will consider the likelihood that the Delinquent Report and all Subsequent Reports can be filed or refiled, as applicable, during the Additional Cure Period, as well as the company's general financial status, based on information provided by a variety of sources, including the company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body. The Exchange strongly encourages companies to provide ongoing disclosure on the status of the Delinquent Report and any Subsequent Reports to the market through press releases, and will also take the frequency and detail of such information into account in determining whether an Additional Cure Period is appropriate. If the Exchange determines that an Additional Cure Period is appropriate and the company fails to file the Delinquent Report and all Subsequent Reports by the end of such Additional Cure Period, suspension and delisting procedures will commence immediately in accordance with the procedures set out in Section 1010. In no event will the Exchange continue to trade a company's securities if that company (i) has failed to cure its Filing Delinquency or (ii) is not current with all Subsequent Reports, on the date that is twelve months after the company's initial Filing Delinquency.

Application to Filings Delayed at Time of Rule Adoption

Any company that incurred a Filing Delinquency prior to the effectiveness of this Section 1007 that remained uncured at the date of such effectiveness will continue to be subject to the compliance plan provisions of Section 1009 in relation to such Filing Delinquency but will be subject to this Section 1007 in relation to any subsequent Filing Delinquency.

Sec. 1101. GENERAL

An issuer having a security listed on the Exchange is required to file with the Exchange three (3) copies of all reports and other documents filed or required to be filed with the SEC. Listed issuers must comply with applicable SEC requirements with respect to the filing of reports and other documents through the SEC's Electronic Data Gathering Analysis and Retrieval ("EDGAR") system, and an issuer which submits such reports through EDGAR (as well as any reports which are permitted but not required to be submitted through EDGAR) will be deemed to have satisfied its filing requirement to the Exchange. A company that is not required to file reports with the SEC shall file with the Exchange three (3) copies of reports required to be filed with the appropriate regulatory authority. All required reports shall be filed with the Exchange on or before the date they are required to be filed with the SEC or appropriate regulatory authority.

The Exchange also requires that certain other submissions be made and notice be given to the Exchange on a timely basis, including but not limited to materials related to corporate actions (such as record dates and dividend and shareholder meeting notifications), additional listing applications and supporting materials, notices of changes in officers and directors, changes in the form or nature of securities or the general character of the business and all materials sent to shareholders or released to the press. Companies having a security listed on the Exchange are urged to consult the appropriate Company Guide provisions and/or [their assigned Listing Qualifications analyst] Exchange staff in this regard. In particular, see Section 1007 (SEC Annual and Quarterly Report Timely Filing Criteria).

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