

TO: NYSE Listed Company Executives
FROM: NYSE Regulation
RE: Listed Company Compliance Guidance for **NYSE Issuers**
DATE: January 31, 2024

Each year, the staff of NYSE Regulation prepares a guidance memo regarding important rules and policies applicable to companies listed on the New York Stock Exchange (“NYSE” or the “Exchange”). We encourage you to provide a copy of this memo to appropriate executives and outside advisors who handle matters related to your listing on the NYSE. Please do not hesitate to contact the staff with any question or concern you may have.

This memo describes new information immediately below, with important reminders in the sections that follow. Please note that this memo is applicable to all listed issuers, with any rule or policy differences for Domestic vs. Foreign Private Issuers (“FPIs”) identified within.

A complete text of Exchange rules can be found online in the [NYSE Listed Company Manual](#) (“Listed Company Manual” or “LCM”).

What’s New

Recovery of Erroneously Awarded Compensation:

On October 2, 2023, NYSE amended the LCM to add Sections 303A.14 and 802.01F. The rules require listed companies to have in place policies and procedures for recovery of erroneously awarded compensation, subject to limited exceptions.

All issuers were required to comply by December 1, 2023 and confirm to the Exchange no later than December 31, 2023 via [Listing Manager](#), either: 1) adoption of a compensation recovery policy by December 1, 2023 or 2) reliance on an applicable exemption.

In adopting Rule 10D-1, the Securities and Exchange Commission (“SEC”) specifically provided for certain limited exemptions from the requirement for all issuers to adopting a Recovery Policy. In doing so, the SEC did not provide any such exemption for issuers whose only listed securities are debt securities, including issuers of debt securities guaranteed by a parent company whose common equity securities are typically listed on the Exchange. In response to inquiries from listed companies and their advisors, NYSE Regulation has sought clarification from the SEC regarding the treatment of debt-only issuers under Rule 10D-1 and Section 303A.14. As a result of those conversations, NYSE Regulation confirms that all debt-only issuers listed on the NYSE are required to adopt a Recovery Policy, including, without limitation, those with guarantees from listed parents and those that are exempt from disclosure requirements pursuant to Exchange Act Rule 12h-5.

To the extent an issuer has not put in place relevant procedures, it is out of compliance with NYSE rules.

Sales of Securities to Passive Shareholders:

Pursuant to recently approved amendments, to Sections 312.03(b) and 312.04 of the LCM, the Exchange has expanded the circumstances under which listed companies can sell securities without shareholder approval to large passive shareholders.

Prior to the recent amendment, Section 312.03(b)(i) of the LCM provided that shareholder approval was required prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, in any transaction or series of related transactions, to a director, officer or substantial security holder of the company if the number of shares of common stock to be issued, or if the number of shares of common stock into which the securities might be convertible or exercisable, exceeded either one percent of the number of shares of common stock or one percent of the voting power outstanding before the issuance.

Section 312.04(e) of the LCM provides that an interest consisting of less than either five percent of the number of shares of common stock or five percent of the voting power outstanding of a company or entity shall not be considered a substantial interest or cause the holder of such an interest to be regarded as a substantial security holder. As such, Section 312.03(b)(i) in its historical form limited the ability of listed companies to sell securities to any passive holder of more than either five percent of the number of shares of its common stock or five percent of the voting power outstanding of the company. The Exchange believes that transactions with these kinds of passive shareholders who do not participate in the governance or management of the company do not give rise to the potential conflicts of interest in the determination of transaction terms that exist where the purchaser has a role in the listed company's board or management. For this reason, the Exchange amended Section 312.03(b)(i) to exclude sales of securities to passive shareholders from the shareholder approval requirements thereunder.

As amended, Section 312.03(b)(i) is now limited in its application to sales to a director, officer, controlling shareholder or member of a control group or any other substantial security holder of the company that has an affiliated person who is an officer or director of the company (each an "Active Related Party") and is no longer applicable to passive shareholders that do not meet the definition of an Active Related Party. For purposes of determining the existence of a group, the Exchange will rely on the filings on Schedule 13D or Schedule 13G disclosing the existence of a group as determined under Section 13(d)(3) or Section 13(g)(3) of the Exchange Act, along with any additional follow-up inquiry that is needed.

Shortened Settlement Cycle (T+1):

On February 15, 2023, the SEC adopted amendments to Rule 15c6-1(a)¹ to shorten the standard settlement cycle from two business days after the trade date ("T+2") to one business day after the trade date ("T+1"). The transition to a T+1 settlement cycle will occur on May 28, 2024. In order to conform its rules to the proposed amendments, the Exchange will propose to adopt new rules to reflect "regular way" settlement as occurring on T+1.

Of particular note to listed companies is that the shortened settlement cycle will also result in a change in the Exchange's rules with respect to ex-dividend and ex-rights trading, from commencing one trading day before the record date for a dividend or other distribution, to commencement of ex-dividend trading or ex-rights trading on the record date.

To facilitate the transition to T+1 trading, May 29, 2024 will be the settlement day for trades that occur on both May 24, 2024 and May 28, 2024. To avoid confusion, the Exchange and other Self-Regulatory Organizations have agreed with DTCC that no securities will become ex-dividend on May 28, 2024. The following summarizes how ex-dividend trading dates will be set during this transition period:

¹ <https://www.sec.gov/files/rules/final/2023/34-96930.pdf>

- Securities paying a dividend with a record date of May 28 will be traded ex-dividend on May 24².
- Securities paying a dividend with a record date of May 29 will be traded ex-dividend on May 29.

Listed issuers should, to the extent practicable, avoid consummation of corporate actions during the time of transition from T+2 to T+1.

Issuers are reminded that all securities must meet Direct Registration System (“DRS”) and DTC eligibility requirements prior to listing on the Exchange. With the industry’s move to a T+1 settlement cycle, it is crucial that issuers complete the process to become DRS and DTC eligible in a timely manner to avoid any delays in the listing or effective date.

Please contact the NYSE Dividend team at (212) 656-5438 or the Corporate Actions team at (212) 656-5439 with any questions.

NYSE CONTACTS

Shareholder Meeting, Proxy Matters, and related Record Dates	Market Watch team at 877-699-2578 or 212-656-5414 proxyadmin@nyse.com
Timely Alert / Material News Policy	Market Watch team at 877-699-2578 or 212-656-5414 nysealert@nyse.com
Corporate Governance (Written Affirmations)	Corporate Governance team at 212-656-4542 corporategovernance@nyse.com
SLAPs / Shareholder Approval, Voting Rights	Issuer Regulation team at 212-656-5846 or via Listing Manager SLAP submission
Dividends/Distributions (Cash, Stock Splits, etc.) and related Record Dates	Dividend team at 212-656-5438 dividend@nyse.com
Corporate Actions (Liquidations, Mandatory Exchange, Merger, Name Changes, Redemptions, Reverse Stock Split, Spin-off, etc.)	Corporate Actions team at 212-656-5439 corporateactions@nyse.com
Listing Manager (Technical Issues)	Listing Manager team at 212-656-4651 listingmanager@nyse.com
Client Service / Listings Representative	212-656-4050

* * *

² Note, May 27, 2024 is the Memorial Day holiday and all markets are closed.

IMPORTANT REMINDERS

This guidance memo is applicable to all listed issuers, with any rule or policy differences for Domestic vs. FPI issuers identified within.

The following topics are covered below:

<u>ALL ISSUERS</u>	<u>5</u>
A. NYSE Timely Alert/Material News Policy	<u>5</u>
B. Publishing Material News After the Close	<u>6</u>
C. Changes to the Date of a Listed Company’s Earnings Release	<u>6</u>
D. Annual Meeting Requirement	<u>6</u>
E. Record Date Notification	<u>6</u>
F. Shares Reporting	<u>7</u>
G. Corporate Action Notifications	<u>7</u>
H. DRS Eligibility	<u>7</u>
I. Requirements for Annual Reports	<u>8</u>
J. Annual and Interim Written Affirmations of Compliance with Exchange Corporate Governance Requirements	<u>8</u>
K. Change in Executive Officers	<u>8</u>
L. Transactions Requiring Supplemental Listing Applications	<u>8</u>
M. Related Party Transactions	<u>9</u>
<u>DOMESTIC ISSUERS</u>	<u>10</u>
A. Broker Search Cards	<u>10</u>
B. NYSE Rule 452, Voting by Member Organizations	<u>10</u>
C. Shareholder Approval and Voting Rights Requirements	<u>10</u>
D. Voting Requirements for Proposals at Shareholder Meetings	<u>11</u>
<u>FOREIGN PRIVATE ISSUERS</u>	<u>12</u>
A. FPI Semi-annual reporting	<u>12</u>

* * *

IMPORTANT REMINDERS: ALL ISSUERS

A. NYSE Timely Alert/Material News Policy

The Exchange's Timely Alert/Material News policy is designed to ensure that investors have access to all material news about a listed company prior to trading in its securities and that no investor can trade on the basis of news that has not yet been fully disseminated to the marketplace. In support of this policy, Sections 201 and 202 of the [Listed Company Manual](#) require listed companies to promptly release to the public any news or information that might reasonably be expected to materially affect the market for its securities. Listed companies may comply with the Timely Alert/Material News policy by disseminating material news via a press release or any other Regulation FD-compliant method.

While a listed company must use its own discretion to determine whether a news event is material, the Exchange should be consulted if there is any uncertainty regarding the materiality of the announcement. Examples of news the Exchange would generally consider to be material include: earnings, mergers/acquisitions, executive changes, redemptions/conversions, securities offerings and pricings related to these offerings, major product launches, regulatory rulings, new patent approvals, and dividend or major repurchase announcements.

Please note that the Timely Alert/Material News policy also applies in connection with the verbal release of material news during the course of a management presentation, investor call, or investor conference. The fact that any such presentation is conducted in compliance with Regulation FD does not mean that the listed company is exempt from compliance with the Timely Alert/Material News policy in connection with any material news provided in the course of the presentation.

Material News Released During the Trading Day: Companies are required to call the Exchange's Market Watch Group (212-656-5414 or 877-699-2578) when intending to release material news between 7:00 a.m. ET and the end of the NYSE trading session (4:00 p.m. ET). Specifically, a company must call:

- 10 minutes before the dissemination of news that is of a material nature or that may have an impact on trading in the company's securities, including any dividend or stock distribution; or
- promptly upon becoming aware of a material event having occurred (that was beyond the company's control). The company must also take steps to promptly release the news to the public.

It is important that the company's representative calling the Exchange be knowledgeable about the details of the news being issued in case questions arise.

In addition to calling Market Watch, a company must provide the Exchange with a copy of any material announcement, with information about the Regulation FD-compliant method it intends to use to disseminate the news and how the Exchange can locate the news upon publication. This information should be submitted electronically through [Listing Manager](#) or emailed to nysealert@nyse.com.

Material News Released Outside Trading Hours: Outside of the hours 7:00 a.m. ET and the end of the NYSE trading session (4:00 p.m. ET), companies are generally not required to call the Exchange in advance of issuing news, although companies should still provide a copy of material news once it is disclosed, by submitting it electronically through [Listing Manager](#) or via e-mail to nysealert@nyse.com.

NYSE listed companies are required to provide notice to the Exchange at least 10 minutes before making any public announcement with respect to a dividend or stock distribution, including when it is made outside of Exchange trading hours.

When will the Exchange Halt Trading?

- Between the hours of 9:25 a.m. and 4:00 p.m. ET, it is the Exchange's practice to institute a trading halt pending dissemination of news if the Exchange believes that the news is material and the company has not yet disclosed the news in compliance with the Exchange's Timely Alert/Material News policy.
- Between the hours of 7:00 a.m. and 9:25 a.m. ET, the Exchange will implement a news pending trading halt only at the request of the company.

The Exchange will resume trading once the material news is broadly disseminated.

B. Publishing Material News After the Close

Pursuant to Section 202.06 of the [Listed Company Manual](#), listed companies are prohibited from publishing material news after the official closing time for the NYSE's trading session until the earlier of 4:05 p.m. ET or the publication of the official closing price of the company's security. This requirement is designed to alleviate confusion caused by price discrepancies between trading prices on other markets after the NYSE official closing time, which is generally 4:00 p.m. ET, and the NYSE closing price upon completion of the auction, which can be after 4:00 p.m. ET.

Companies can refer to NYSE Connect (<https://www.nyse.com/connect>) to obtain real-time information about the timing of completion of closing auctions for their securities or, in the alternative, obtain this information from major market data vendors.

C. Changes to the Date of a Listed Company's Earnings Release

If a listed company needs to change the date of its previously announced earnings release, it is important for the company to promptly and broadly disseminate any date change to the market non-selectively.

D. Annual Meeting Requirement

Section 302 of the [Listed Company Manual](#) states that a listed company must have an annual shareholders' meeting during each fiscal year. This applies to all issuers with voting stock, as well as those with non-voting stock if required under their governing documents. Separately, in situations where the requirements of home country law differ from NYSE rules, FPIs can follow home country practice in lieu of complying with the foregoing shareholder meeting requirements. Please note that if a meeting is postponed or adjourned, the Exchange does not consider the company to have met the Section 302 requirement to hold an annual meeting.

E. Record Date Notification

To participate in shareholder meetings, as well as receive company distributions and other important communications, investors must hold their securities on the relevant record date established by the listed company. Companies determine their own record date, and the Exchange disseminates the record date information to the marketplace so that investors can plan their holdings accordingly. To facilitate this process:

- Listed companies are required to notify the Exchange at least 10 calendar days in advance of all record dates.
- A listed company that changes a record date must provide another advance notice to the Exchange of at least 10 calendar days.

- A listed company's publication of a record date by means of a press release or SEC filing does not constitute notice to the Exchange.

Section 204 of the [Listed Company Manual](#) establishes the methods for listed companies to provide record date notice:

- For cash and stock distributions, record date notifications should be submitted electronically through [Listing Manager](#) or emailed to the Exchange (dividend@nyse.com).
- For shareholder meetings, record date notifications should be submitted through [Listing Manager](#) or emailed to the Exchange (proxyadmin@nyse.com).

Record dates should not be set on a Saturday, Sunday, or Exchange holiday. In rare situations, where the terms of a security mandate a record date that falls on a Saturday, Sunday or Exchange holiday, the company's announcements should make clear that the effective record date is the immediately preceding U.S. business day.

F. Share Reporting

Please note that the NYSE relies on a listed company's transfer agent or depository bank to report share information. Transfer agents are required to report shares no later than the 10th day following the end of each calendar quarter. Reported shares are reflected in [Listing Manager](#).

G. Corporate Action Notifications

Advance notice to the Exchange is required for any corporate action affecting a listed security. It is recommended that a listed company contact the Corporate Actions team at 212-656-5439 or corporateactions@nyse.com any time a corporate action is being contemplated. Listed issuers are reminded of the timeline requirements below.

Redemption and Conversion of Listed Securities: Pursuant to Sections 204.22 and 311.01 of the [Listed Company Manual](#), a listed company is required to provide the Exchange with notice of redemption or conversion of a listed security **at least fifteen calendar days** in advance of the redemption or conversion date. Please also note that such event may trigger the Exchange's Timely Alert/Material News Policy.

Other Corporate Action Notifications: Advance notice to the Exchange and public dissemination via a press release or another Regulation FD-compliant method is required for any corporate action affecting the listed security, including, but not limited to, change in name/symbol/CUSIP, redomestication, business reorganization, or a tender or exchange offer. Such announcement should be issued **at least ten calendar days** in advance of the effective date of the corporate action and contain all relevant information on the corporate action, and clearly state the anticipated timing of the event. The Exchange disseminates this information to the marketplace so that market participants are timely informed and, if necessary, make systematic changes on their end.

H. DRS Eligibility

Section 501.00 of the [Listed Company Manual](#) requires that all securities listed on the Exchange be made eligible for a direct registration system ("DRS") operated by a securities depository. Listed issuers are strongly encouraged to take all the necessary steps to cause their security(ies) to become DRS eligible well in advance of the desired listing date. An inability to timely make a security DRS eligible may cause the listing date to be delayed.

I. Requirements for Annual Reports

Section 203.01 of the [Listed Company Manual](#) requires any company with voting or non-voting common securities listed on the Exchange 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) to simultaneously make such annual report available to shareholders of such securities on or through the company's website.

Separately, a listed company that is not required to comply with the SEC proxy rules must:

- Post a prominent undertaking on its website to provide all holders the ability, upon request, to receive a hard copy of the company's complete audited financial statements free of charge; and
- Issue a press release that:
 - States that the Form 10-K, 20-F, 40-F, or N-CSR has been filed with the SEC;
 - Includes the company's website address; and
 - Indicates that shareholders have the ability to receive a hard copy of the complete audited financial statements free of charge upon request.

J. Annual and Interim Written Affirmations of Compliance with Exchange Corporate Governance Requirements

The Exchange requires that listed companies file an Annual Written Affirmation each calendar year. FAQs about Section 303A Corporate Governance Standards can be found on the Exchange's [website](#).

- For Domestic companies, the Annual Written Affirmation is due no later than 30 days after the company's annual shareholders' meeting or, if no annual meeting is held, 30 days after the company's annual report is filed with the SEC. Domestic companies are also required to submit an Annual CEO Certification, which is incorporated in the Annual Written Affirmation, that confirms compliance with NYSE corporate governance rules.
- FPIs are required to file an Annual Written Affirmation 30 calendar days after the company's annual report is filed with the SEC.

In addition, a listed company must file an Interim Written Affirmation promptly (within 5 business days) after any triggering event specified on that form. Domestic companies are not required to submit an Interim Written Affirmation for changes that occur within 30 days after the annual meeting if they are included in the Annual Written Affirmation.

The Annual Written Affirmation and Annual CEO Certification are automatically created by Listing Manager and the Interim Written Affirmation can be created by a Listing Manager user. Please consult the Exchange if you believe an Annual Written Affirmation and Annual CEO Certification record needs to be created to allow for submission.

K. Change in Executive Officers

In addition to reporting changes to the board of directors via a Written Affirmation, prompt notice is required to be given to the Exchange of any change in executive officers pursuant to Section 204.10 of the [Listed Company Manual](#). These changes should be reported to the company's Listings representative so that contact information can be updated. Please also note that a change in officer may trigger the Exchange's Timely Alert/Material News Policy.

L. Transactions Requiring Supplemental Listing Applications

A listed company is required to file a Supplemental Listing Application ("SLAP") to seek authorization from the Exchange for a variety of corporate events, including:

- Issuance (or reserve for issuance) of additional shares of a listed security;
- Issuance (or reserve for issuance) of additional shares of a listed security that are issuable upon conversion of another security, whether or not the convertible security is listed on the Exchange;
- Change in corporate name, state of incorporation, or par value; and/or
- Listing a new security (e.g., new preferred stock, second class of stock, or bond).

No additional shares of a listed security, or any security convertible into the listed security, may be issued until the Exchange has authorized a SLAP. Such authorization is required prior to issuance, regardless of whether the security is to be registered with the SEC, including if conversion is not possible until a future date. The Exchange requests at least two weeks to review and authorize all SLAPs. It is recommended that a SLAP be submitted electronically through [Listing Manager](#) as soon as a listed company's board approves a transaction.

Section 703 of the [Listed Company Manual](#) provides additional information on the timing and content of SLAPs. Domestic companies should also give particular attention to Sections 303A.08, 312.03 and 313 of the [Listed Company Manual](#) (see **Shareholder Approval and Voting Rights Requirements** below). Generally, FPIs may follow home country practice in lieu of these requirements. Please consult the Exchange if you have any questions.

M. Related Party Transactions

Section 314.00 of the [Listed Company Manual](#) states that that a company's audit committee, or another independent body of the board of directors, shall conduct a reasonable prior review and oversight of all related party transactions for potential conflicts of interest and will prohibit such a transaction if it determines it to be inconsistent with the interests of the company and its shareholders. For purposes of this rule, the term "related party transaction" refers to transactions required to be disclosed pursuant to Item 404 of Regulation S-K under the Securities Exchange Act. In the case of FPIs, the term "related party transactions" refers to transactions required to be disclosed pursuant to Form 20-F, Item 7.B.

* * *

IMPORTANT REMINDERS: DOMESTIC ISSUERS

A. Broker Search Cards

SEC Rule 14a-13 requires any company soliciting proxies in connection with a shareholder meeting to send a search card to any entity that the company knows is holding shares for beneficial owners. The purpose of this requirement is to ensure that the company prepares a sufficient number of proxy materials to enable each beneficial owner to receive a copy. As applicable to NYSE listed companies, Rule 14a-13 requires that the search card be sent at least 20 business days before the record date for the annual meeting.

B. NYSE Rule 452, Voting by Member Organizations

The Exchange reviews all listed company proxy materials to determine whether specific client instructions are necessary for an NYSE member organization that holds customer securities in “street name” accounts as broker to vote on proxy matters without having received specific client instructions.

The Exchange recommends that listed companies submit their preliminary proxy materials to the Exchange for review. Exchange staff is then able to provide a view (subject to a final review upon receipt of definitive materials) on the permissibility of broker voting under NYSE Rule 452 on each proposal included in the preliminary proxy statement. This early review helps companies assess whether to include proposals in their definitive proxy statements and plan their solicitation activities. A submission of preliminary proxy materials should be marked to clearly indicate that it is in preliminary or draft form and that it is confidential.

C. Shareholder Approval and Voting Rights Requirements

The ability to vote on certain corporate actions is one of the most fundamental and important rights afforded to shareholders of companies listed on the Exchange. The matters on which shareholders may vote include amendments to equity compensation plans and certain share issuances. Sections 303A.08 and 312.03, respectively, of the [Listed Company Manual](#) outline the Exchange’s shareholder approval requirements in this regard. Section 313 outlines the Exchange’s voting rights requirements.

The Exchange is unable to authorize transactions that violate its shareholder approval and/or voting rights rules. To avoid this undesirable outcome, listed companies are strongly encouraged to consult the Exchange prior to entering into a transaction that may require shareholder approval. This includes the issuance of securities: (i) with anti-dilution price protection features; (ii) that may result in a change of control; (iii) to a related party (unless the transaction is a market price cash transaction or the related party is a passive investor); (iv) in excess of 19.9% of the pre-transaction shares outstanding; and (v) in an underwritten public offering in which a significant percentage of the shares sold may be to a single investor or to a small number of investors.

Listed companies are also encouraged to consult the Exchange prior to entering into a transaction that may adversely affect the voting rights of existing shareholders of the listed class of common stock, as such transactions may violate the Exchange’s voting rights requirements. Examples of transactions that adversely affect the voting rights of shareholders include those that result in a particular shareholder having: (i) board representation that is out of proportion to that shareholder’s investment in the company; or (ii) special rights pertaining to items that normally are subject to shareholder approval under either state or federal securities laws, such as the right to block mergers, acquisitions, disposition of assets, voluntary liquidation, or certain amendments to the company’s organizational/governing documents. It is important to note that shareholder approval of a transaction does not resolve a voting rights rule violation.

FAQs about Section 303A.08 (Stockholder Approval for Equity Compensation Plans) and interpretations of Section 313 (Voting Rights Interpretations Under Listed Company Manual Section 313) can be found on the Exchange's [website](#).

D. Voting Requirements for Proposals at Shareholder Meetings

Section 312.07 of the [Listed Company Manual](#) provides that, where shareholder approval is required under NYSE rules, the minimum vote that constitutes approval for such purposes is approval by a majority of votes cast.

* * *

IMPORTANT REMINDERS: FOREIGN PRIVATE ISSUERS

A. FPI Semi-Annual Reporting

An NYSE-listed FPI is required to submit a Form 6-K to the SEC containing semi-annual unaudited financial information no later than six months following the end of the company's second fiscal quarter.

The Form 6-K must include:

- 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.

If the issuer fails to file its semi-annual financial statements within the prescribed time period, the issuer will be subject to the late filer rules set forth in Section 802.01E of the [Listed Company Manual](#).