



January 30, 2009

Dear Listed Company Executive:

With the 2009 annual shareholders' meeting season approaching, the New York Stock Exchange would like to remind its listed companies of their obligations regarding notifications to and filings with the Exchange. Please take a moment to review these guidelines and become familiar with certain rule and policy changes that have been approved or proposed. I strongly encourage you to become familiar with all of the capabilities of eGovDirect, our complimentary proprietary website, and to use it to meet some of these requirements (see eGovDirect.com below).

The NYSE Listed Company Manual can be found on [www.nyse.com](http://www.nyse.com); click on "Information: For Listed Companies" then "Listed Company Manual". It contains the complete rule text on these topics and is equipped with a search feature that will assist in locating relevant information.

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#### **Notifications to the Exchange**

- **Setting of Dates:** The Exchange must be notified immediately of all dates set in conjunction with a dividend or the calling of an annual or special meeting of shareholders. If consents are to be used in lieu of a special meeting, notification is also required. Notifications should be made electronically through eGovDirect.com. Please note that broker search cards are not considered written notification.
- **Record Date:** Notice must be received no later than ten calendar days prior to the record date, unless the Exchange agrees otherwise. A record date should not be set on a Saturday, Sunday or Exchange holiday. Any change in a record date requires another advance notice of ten calendar days.
- **Meeting Date:** A 30-calendar day interval between the record date and meeting date is recommended.
- **Proxy Materials:** Six definitive copies of all proxy materials (including the proxy card) are required to be filed with the Exchange no later than the date on which such materials are sent to any security holder. Proxy materials should be sent to:

Ms. Cecilia S. Cheung  
Corporate Actions & Market Watch  
NYSE Euronext  
20 Broad Street, 17<sup>th</sup> floor  
New York, NY 10005  
212.656.5030

The Exchange recommends that a listed company submit its preliminary proxy materials for review. The submission should be marked to clearly indicate that it is in preliminary or draft form and that it is confidential. The Exchange can offer full assurance that a submission of such materials will not result in premature disclosure of the contents.

If any action to be taken at a shareholders' meeting relates to matters which may substantially affect the rights or privileges of listed securities, the Exchange staff will review the preliminary materials to determine whether member organizations can vote the shares held in "street" name without specific instructions from the beneficial owners. This review will help the company avoid situations which conflict with the requirements or policies of the Exchange.

Questions regarding setting a record date for a dividend should be directed to Joe Conte at 212.656.5024 or [sconte@nyx.com](mailto:sconte@nyx.com). Questions regarding setting a record or meeting date for a shareholders' meeting or the Exchange's review of proxy materials should be directed to Cecilia Cheung at 212.656.5030 or [ccheung@nyx.com](mailto:ccheung@nyx.com).

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### **Amendment to NYSE Rule 452**

On October 24, 2006, the Exchange filed a proposal with the Securities and Exchange Commission ("SEC") to amend NYSE Rule 452 to eliminate discretionary broker voting in connection with the election of directors (SR-NYSE-2006-92). On May 23, 2007, Amendment No. 1 to this proposal was filed with the SEC with one significant change, an exemption for companies registered under the Investment Company Act of 1940.

Based on conversations with SEC staff members, this proposed rule change is being considered by the Commission as part of a broader range of issues relating to shareholder communications. The Exchange cannot predict the results of that consideration or the timing of SEC approval of the current proposal to amend NYSE Rule 452 or some alternative proposal to amend the rule.

Questions regarding this filing should be directed to Judy McLevey at 212.656.4509 or [jmclevey@nyx.com](mailto:jmclevey@nyx.com).

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### **Annual Financial Statement Requirement**

Section 203.01 of the Listed Company Manual requires a listed company to:

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

On December 16, 2008, the NYSE filed to modify this rule (SR-NYSE-2008-128). The modification, which was operative upon filing, provides that a listed company that is subject to the U.S. proxy rules, or an issuer that is not subject to the U.S. proxy rules but provides its audited financial statements (as included on Form 10-K) 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 by Section 203.01.

Note: These changes were originally included with proposed changes to Section 303A (SR-NYSE-2005-81 Amendment 2), see Pending rule change below.

Questions regarding the Exchange's annual financial statement requirement should be directed to your corporate governance analyst as listed in NYSE Contacts on eGovDirect.

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### **Corporate Governance**

#### **Written Affirmation/CEO Certification Requirements**

A listed company is required to file a Domestic Company Section 303A Annual Written Affirmation and a Domestic Company Section 303A Annual CEO Certification each calendar year. The annual written affirmation and CEO Certification are 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 Form 10-K is filed with the SEC.

Additionally, a Domestic Company Section 303A Interim Written Affirmation must be filed promptly (within five business days) after any triggering event specified on the form. If the interim written affirmation reflects the addition of a new independent director, the company must provide with the affirmation a brief biography of the director, information regarding share ownership in the company and a brief description of any business relationships and/or fee arrangements with the company within the last three years. If the individual does not own any shares or did not have any business relationships or fee arrangements within the last three years, the company should indicate that on the affirmation exhibit. If any or all of such information is available through an EDGAR filing, the company can specify the location of such disclosure on the affirmation exhibit in lieu of restating the information.

The annual and interim written affirmations and CEO Certification can be easily created and filed electronically through eGovDirect. The forms and instructions are also available on [www.nyse.com](http://www.nyse.com); click on “Information: For Listed Companies” then “Corporate Governance Forms”.

#### Director independence rule changes

On August 12, 2008, the New York Stock Exchange filed to modify two of its bright line director independence tests in Section 303A.02(b) of the Listed Company Manual (SR-NYSE-2008-75). On September 11, 2008 the changes became operative:

- Increasing the Section 303A.02(b)(ii) direct compensation bright line test dollar threshold from \$100,000 to \$120,000 to bring the standard in line with Item 404 of Regulation S-K.
- Amending the Section 303A.02(b)(iii) external and internal auditor bright line test as it applies to a director with an immediate family member so that it applies only to an immediate family member who:
  - Is a current partner of such a firm;
  - Is a current employee of such a firm and personally works on the listed company's audit; or
  - Was within the last three years a partner or employee of such a firm and personally worked on the listed company's audit within that time.

Note: These changes were originally included with other proposed changes to Section 303A (SR-NYSE-2005-81 Amendment 2), see Pending rule change below.

#### Pending rule change

In June 2007, the Exchange filed with the SEC Amendment No. 2 to its proposal to modify the corporate governance listing standards set forth in Section 303A of the Listed Company Manual (SR-NYSE-2005-81). As noted above, changes to certain 303A.02(b) director independence tests and to Section 203.01 were separated from Amendment No. 2, filed independently and subsequently approved by the SEC. We continue to discuss the other proposed changes with the SEC.

#### Classified boards of directors

Pursuant to Section 304 of the Listed Company Manual, the NYSE will not list a company whose board of directors is divided into more than three classes. The rule states: Where classes are provided, they should be of approximately equal size and tenure and directors' terms of office should not exceed three years. In interpreting this rule, the Exchange requires a listed company with a classified board to elect a majority of its board every two years.

#### 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. In interpreting this rule, the Exchange considers an annual shareholders' meeting to be one at which directors are elected. Please note that if a meeting is postponed or adjourned without taking action on the election of directors, the Exchange does not consider the company to have met the Section 302 requirement to hold an annual meeting.

Questions regarding the NYSE's corporate governance standards should be directed to your corporate governance analyst as listed in NYSE Contacts on eGovDirect.

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### **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., a new preferred stock, second class of stock).

The Exchange requests at least two weeks to review and approve all applications. Please note that the SLAP and supporting documents are due prior to the issuance of the listed security or any security convertible into the listed security, even if conversion is not possible until a future date. It is recommended that a SLAP be forwarded to the Exchange as soon as a listed company’s board approves a transaction, whether or not the security is to be registered with the SEC at that time.

Section 703 of the Listed Company Manual provides additional information on the timing and content of SLAPs. Particular attention should also be given to Sections 312 and 303A.08 which outline shareholder approval requirements for corporate transactions and equity compensation plans.

An amendment to Section 703 became operative in October 2008 (SR-NYSE-2008-82) with regard to the requirement to provide an opinion of counsel as a supporting document to an application. The NYSE no longer requires an opinion of counsel specific to the NYSE. However, the amended rule requires that issuers provide copies of opinions of counsel filed in connection with recent public offerings or, if no opinions of counsel exist, a certificate of good standing from the company’s jurisdiction of incorporation.

Listed companies are strongly encouraged to consult the Exchange prior to entering into a transaction that may require shareholder approval including, but not limited to, the issuance of securities with anti-dilution price protection features, issuance of securities that may result in a change of control, issuance of securities to a related party, issuance of securities in excess of 19.9% of the pre-transaction shares outstanding and the issuance of securities in an underwritten public offering in which a significant percentage of the shares sold may be to a single investor or a small number of investors.

Frequently asked questions (“FAQs”) about Section 303A.08 Stockholder Approval for Equity Compensation Plans can be found on [www.nyse.com](http://www.nyse.com); click on “Information: For Listed Companies” then “Listed Company Corporate Governance”.

Questions regarding SLAPs or shareholder approval requirements should be directed to your listing analyst as listed in NYSE Contacts on eGovDirect or Cynthia Melo at 212.656.5587 or [cmelo@nyx.com](mailto:cmelo@nyx.com).

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### **Direct Registration System**

Pursuant to Section 501 of the Listed Company Manual, NYSE-listed companies were required to be eligible for a Direct Registration System (“DRS”) as of March 31, 2008. More information on DRS can be found on The Depository Trust & Clearing Corporation (DTCC) website, [www.dtcc.com](http://www.dtcc.com). Companies are encouraged to utilize DRS and to consult with their transfer agent or DTCC to review the benefits and costs related to DRS.

Questions regarding DRS should be directed to Judy McLevey at 212.656.4509 or [jmclevey@nyx.com](mailto:jmclevey@nyx.com).

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### **NYSE Timely Alert Policy Reminder**

It is important to ensure the investing public has equal access to material corporate information as soon as it becomes available. Current NYSE policy requires listed companies to immediately issue a press release to the major wire services when material information may reasonably be expected to affect the market in its securities.

If material news is being released during market hours, a listed company is required to give the Exchange ten minutes prior notice of the press release. This notification requirement permits an evaluation of the importance of the news and its potential impact on the market. If new material information is inadvertently disclosed during a conference call or webcast, the Exchange requires a listed company to promptly issue a press release regarding the information. If this new information is disclosed during market hours, the listed company must immediately notify the Exchange as to the new disclosure. If a listed company plans to make a material announcement on a publicly accessible conference call or webcast that complies with the SEC's Regulation Fair Disclosure ("Reg FD"), the Exchange requires disclosure of the matter in a press release issued no later than the start of the conference call or webcast.

To ensure adequate coverage, Section 202.06 (C) of the Listed Company Manual states that press releases requiring immediate publicity should be given to Dow Jones & Company, Inc., Reuters America and Bloomberg Business News. A listed company is also encouraged to promptly distribute its releases to the Associated Press and United Press International as well as to newspapers in New York City and in cities where the company is headquartered or has plants or other major facilities.

Pursuant to Reg FD the SEC provides a variety of mechanisms for the dissemination of material information to the public including press releases, public conference calls, webcasts and Form 8-K filings. For purposes of maintaining a fair and orderly trading market, the Exchange continues to believe that a press release is the best way for a listed company to ensure the timely and widespread dissemination of material news. However, the Exchange recognizes that the SEC has afforded companies more discretion as to how to make disclosures required under Reg FD and, to harmonize our rules with those of the SEC, we are currently considering an amendment to our timely alert policy that would allow companies to comply with the policy by using any Reg FD-compliant method of disclosure. We will inform you if and when the SEC approves this rule change.

Questions regarding the NYSE's Timely Alert Policy should be directed to your client service representative as listed in NYSE Contacts on eGovDirect or Judy McLevey at 212.656.4509 or [jmclevey@nyx.com](mailto:jmclevey@nyx.com).

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### **Listed Company Manual**

Attached is a list of certain sections of the Listed Company Manual that were amended during 2008.

Questions regarding the Listed Company Manual changes should be directed to Christine Pilone at 212.656.2820 or [cpilone@nyx.com](mailto:cpilone@nyx.com).

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### **eGovDirect.com**

eGovDirect.com is the NYSE's complimentary secure interactive web-based filing platform for listed companies and closed-end funds. It is designed to help a listed company meet its corporate governance and compliance requirements efficiently and effectively. The system proactively anticipates and notifies users of important filing dates and then provides an automatic response acknowledging the filing. Users are able to capture, submit, classify and archive all governance and corporate reporting requirements electronically.

The website enables a listed company to replace certain telephonic and hard copy filings and notices with electronic reporting. Examples include the reporting of dividends, shareholders' meetings, shares outstanding, and the ability to update and maintain board member and officer information. A company may also choose to forego hard copy submission of its corporate governance written affirmations as eGovDirect provides the capability to create, submit and archive annual and interim written affirmations electronically. Press releases can also be submitted via the site, insuring greater security and a faster response time by the NYSE.

eGovDirect also provides value-added tools to assist a company in its compliance programs. The Benchmark tool enables a company to compare its corporate governance programs against any subset of its NYSE-listed peers. A Director Lookup feature allows a company to search for new directors by easily accessing a full complement of directors from public and non-public companies. The site also provides an Independence Wizard to assist a company in evaluating a director's independence against the NYSE bright line independence standards.

There are over 1,800 (or 90%) of the domestic operating companies and closed-end funds currently registered and using eGovDirect. Please look for future communications regarding this product and invitations for training sessions.

Questions regarding eGovDirect should be directed to Christine Pilone or Ricki Spinner at 212.656.4651 or [egovdirect@nyx.com](mailto:egovdirect@nyx.com).

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If you have questions beyond the scope of the matters discussed in this letter, please continue to direct them to your client service representative as listed in NYSE Contacts on eGovDirect.

We hope you find this information helpful and encourage you to provide a copy of this letter to appropriate executives and outside advisors who have responsibility for handling these matters. Our staff is available to respond to any questions or comments.

Sincerely,

Janice O'Neill

cc: Richard G. Ketchum, Chief Executive Officer, NYSE Regulation, Inc.  
Catherine R. Kinney, Group Executive Vice President, NYSE Euronext  
Scott R. Cutler, Executive Vice President, NYSE Euronext  
Douglas C. Chu, Senior Vice President, NYSE Euronext  
John R. Merrell, Senior Vice President, NYSE Euronext  
John G. Casale, Vice President, NYSE Euronext  
K. Darcey Matthews, Managing Director, NYSE Euronext

## Listed Company Manual

Selected Updates: January 1, 2008 to December 31, 2008

- The following section was amended to eliminate the mediation procedure required when a listed company requests a change of its specialist firm. (Release No. 34-57232; File No. SR-NYSE-2008-08):
  - Section 806.01 – Change of Specialist Firm upon Request of Company
- The following section was amended to eliminate text that allowed certain companies (whose delisting would be significantly contrary to the national interest and the interests of public investors) to remain listed in spite of a delay in filing their annual reports that exceeded 12 months, as by its terms the waiver provision ceased to be effective as of December 31, 2007. (Release No. 34-57442, File No. SR-NYSE-2008-13):
  - Section 802.01E – SEC Annual Report Timely Filing Criteria
- The following were amended to eliminate Sections 305 and 308 and to eliminate the shareholder rights provisions of Section 314. (Release No. 34-58303, File No. SR-NYSE-2008-62):
  - Section 305.00 – Concentration of Voting Power (section deleted)
  - Section 308.00 – Defensive Tactics (section deleted)
  - Section 314.00 – Related Party Transactions (Special Rights of Certain Shareholders section deleted)
- The following sections were amended to reduce the period of time within which a company must issue a press release after the Exchange notifies it that it is noncompliant with Exchange listing requirements. (Release No. 34-58487, File No. SR-NYSE-2008-59):
  - Section 802.02 – Evaluation and Follow-Up Procedures for Domestic Companies
  - Section 802.03 – Continued Listing Evaluation and Follow-Up Procedures for Non-U.S. Companies
- The following sections were amended to reflect changes in two Section 303A.02(b) bright line director independence tests. (Release No. 34-58367, File No. SR-NYSE-2008-75):
  - Section 303A.02(b)(ii) – Independence Tests
  - Section 303A.02(b)(iii) – Independence Tests
- The following sections were amended to modify NYSE requirements with respect to obtaining legal opinions in connection with any initial or supplemental listing application. (Release No. 34-58649, File No. SR-NYSE-2008-82):
  - Reference Guide for Subsequent Listing Applications (703.00 & 903.02)\*
  - 702.04 – Supporting Documents
  - 703.01 (part 2) – General Information
  - 703.02 (part 3) – Stock Split/Stock Rights/Stock Dividend Listing Process
  - 703.03 – Short Term Rights Offerings Relating to Listed Securities Listing Process
  - 703.04 – Public Offerings and Private Placement of Common Stock Listing Process
  - 703.05 – Preferred Stock Offerings Listing Process
  - 703.06 – Debt Securities Offerings Listing Process
  - 703.07 – Reserves for Convertible Securities Listing Process

- 703.08 – Mergers, Acquisitions and Other Business Combinations Listing Process
  - 703.09 – Stock Option, Stock Purchase and Other Remuneration Plans Listing Process
  - 703.10 – Technical Original Listing Process
  - 703.11 – Supplemental Listing Process
  - 703.12 – Warrants Listing Standards
  - 703.13 – "Special Stocks" Listing Process (Stocks Which Have Periodic Increases in Conversion Rate Into Common Stock)
  - 703.14 – Voting Trust Certificate Listing Process
  - 903.01 – Format of Original Listing Application
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- The following section was amended to reduce the period of time within which a company must issue a press release after the Exchange notifies it that it has fallen below the \$1 stock price requirement over a 30-day trading average. (Release No. 34-58900, File No. SR-NYSE-2008-105):
    - Section 802.01C – Price Criteria for Capital or Common Stock
  
  - The following section was amended to reflect changes in the annual financial statement requirement. (Release No. 34-59123, File No. SR-NYSE-2008-128):
    - Section 203.01 – Annual Financial Statement Requirement