

## **Comparison of the 2005 and 2004 Versions of the NYSE Section 303A Domestic Company Written Affirmation Forms**

### February 8, 2005 Updates

The 2005 Domestic Company Written Affirmation Forms were updated by the NYSE on February 8, 2005 and supersede all previously posted forms and instructions. A brief description of the primary revisions follows:

### Instructions For Submission of Domestic Company Section 303A Written Affirmations

- Q1 was revised to specify submission timing requirements.
- Q2 was added to outline the submission timing requirements for companies listing in connection with an initial public offering.
- Q3 was revised to include two additional triggers for an Interim Written Affirmation submission.
- Q4 was added to clarify the Section 303A.12(b) notification requirement.

### Domestic Company Section 303A Annual Written Affirmation:

- Part A – Three categories of company types (open-end funds, preferred/debt only, and other entities) were eliminated due to the fact that the NYSE has created a separate “Special Entities Written Affirmation” for use by these entities. This form will be available shortly.
- Part B – Revisions were made to Items 1 and 2 to (a) specify that biographical information must be attached for new independent directors if not available in an EDGAR filing and (b) require disclosure of any reliance on the transition period available to directors impacted by the November 3, 2004 rule change to Section 303A.02(b)(iii). (See Section 303A.00 for details.)
- Part C and D – Revisions were made to these sections to eliminate the requirement that companies specifically describe any Nominating/Corporate Governance or Compensation Committee required responsibilities that may have been reallocated to another committee.
- Part E – Revisions were made to specify that companies must identify audit committee members with financial literacy and/or financial management expertise.
- The requirements for Exhibit H were revised to require that companies provide detailed disclosure regarding any non-compliance, including a specific timetable for the company’s return to compliance.
- Language was added to footnote (2) to provide that where a CEO signs the Annual Written Affirmation if the company is non-compliant with Section 303A, a separate 303A.12(b) notification is not also required to be submitted.

### Exhibit G to Domestic Company Section 303A Annual Written Affirmation

- The instructions regarding the Exhibit were eliminated, as no longer applicable.
- The Exhibit was updated to reflect that all Section 303A disclosures are required in documents dated after the earlier of the listed company's 2004 Annual Shareholders Meeting or October 31, 2004.
- The Exhibit was generally updated to reflect new rule text from the November 3, 2004 Section 303A amendments. Most significantly, all Section 303A required disclosures, except for those in Sections 303A.09 and .12, must be made in this year's annual proxy statement, or if the company does not file a proxy statement, in the annual report on Form 10-K.
- A new Section 303A.06 item was added, with an itemized list of potential exemptions under Rule 10A-3.
- The Section 303A.03 item was clarified to define "non-management directors."
- The Section 303A.12(a) item was revised to eliminate the requirement to disclose the date of the prior year's CEO certification.

### Annual CEO Certification

The standardized form was revised to incorporate by reference the attachment of Exhibit H to the Annual Written Affirmation, if applicable.

### Domestic Company Section 303A Interim Written Affirmation

- Two new "events" were added that trigger the filing of an Interim Written Affirmation:
  - The listed company has become a controlled company and will rely on the Section 303A controlled company exemptions, or
  - The listed company loses its foreign private issuer status.
- Revisions were made to Parts A, B, C, D and E, the requirements for Exhibit H and footnote (2) that duplicate those made to the Annual Written Affirmation, as described above.