

**TO:** NYSE Listed Company Executives  
**FROM:** NYSE Regulation  
**RE:** Listed Company Compliance Guidance for **NYSE Issuers**  
**DATE:** January 17, 2023

Each year, the staff of NYSE Regulation prepares a guidance memo for important rules and policies applicable to companies listed on the New York Stock Exchange (“NYSE” or the “Exchange”). A complete text of Exchange rules can be found online in the [NYSE Listed Company Manual](#) (“Listed Company Manual”). We have included items that are new 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. We encourage you to provide a copy of this memo to appropriate executives and outside advisers who handle matters related to your listing on the NYSE. We have also provided department contact information below. Please do not hesitate to contact the staff with any question or concern you may have.

**What’s New**

On October 26, 2022, the SEC adopted final rules requiring the recovery of erroneously awarded compensation: [Listing Standards for Recovery of Erroneously Awarded Compensation](#), which will become effective 60 days following publication in the [Federal Register](#), which occurred on November 28, 2022. New Rule 10D-1 of the Securities Exchange Act of 1934 mandates that exchanges adopt listing standards that will apply disclosure and compensation recovery policy requirements to all listed issuers, with only limited exceptions. Each listed issuer will be required to adopt a compensation recovery policy, comply with that policy, and provide the necessary compensation recovery policy disclosures. An issuer will be subject to delisting if it does not adopt and comply with a compensation recovery policy that satisfies the listing standards. The Exchange must adopt listing standards to address these requirements within 90 days following publication of the SEC rules in the Federal Register.

**NYSE CONTACTS**

Shareholder Meeting, Proxy Matters, and related Record Dates	Market Watch analyst at 877-699-2578 or 212-656-5414 <a href="mailto:proxyadmin@nyse.com">proxyadmin@nyse.com</a>
Timely Alert/ Material News Policy	Market Watch analyst at 877-699-2578 or 212-656-5414 <a href="mailto:nysealert@nyse.com">nysealert@nyse.com</a>
Corporate Governance	Corporate Governance analyst at 212-656-4542 <a href="mailto:corporategovernance@nyse.com">corporategovernance@nyse.com</a>
SLAPs / Shareholder Approval, Voting Rights	Issuer Regulation analyst at 212-656-5846 or via <a href="#">Listing Manager</a> SLAP submission
Dividends/Distributions and related Record Dates	Dividend Group at 212-656-5438 <a href="mailto:dividend@nyse.com">dividend@nyse.com</a>
Corporate Actions (Redemptions, Stock Split, etc.)	Corporate Actions analyst at 212-656-5439 <a href="mailto:corporateactions@nyse.com">corporateactions@nyse.com</a>
Listing Manager	Listing Manager analyst at 212-656-4651 <a href="mailto:listingmanager@nyse.com">listingmanager@nyse.com</a>

## IMPORTANT REMINDERS

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

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## **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 (at 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.

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](mailto:nysealert@nyse.com).

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.

**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](mailto: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**

Generally, listed companies publicly announce the date on which they intend to issue their quarterly earnings information. Occasionally, a company needs to change the date of its earnings release. Because a change in the earnings announcement date may affect the trading price of a company's stock and/or related securities, it is important for listed companies 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](mailto:dividend@nyse.com)).
- For shareholder meetings, record date notifications should be submitted through [Listing Manager](#) or emailed to the Exchange ([proxyadmin@nyse.com](mailto: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. Redemption or Conversion of Listed Securities and Share Reporting**

Advance notice to the Exchange is required for a full call redemption or conversion of a listed security. Pursuant to Sections 204.08, 204.22 and 311.01 of the [Listed Company Manual](#), a listed company should promptly contact its Corporate Actions analyst at 212-656-5439 prior to issuing such an announcement. The Exchange disseminates this information to the public and tracks redemptions and conversions to ensure that any reduction in securities outstanding does not result in an issuer's noncompliance with the Exchange's distribution and market capitalization continued listing standards.

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 10<sup>th</sup> day following the end of each calendar quarter. Reported shares are reflected in [Listing Manager](#).

#### **G. 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 also:

- 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; 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.

## **H. 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, as these can be included in the Annual Written Affirmation.

The Annual and Interim Written Affirmations and CEO Certification can be filed electronically through [Listing Manager](#). 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.

### **I. 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.

### **J. 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, 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.

#### **K. 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.

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### **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 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, if other than a market price cash transaction; (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.

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### **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](#).