



**TO:** NYSE MKT Listed Company Executives  
**FROM:** NYSE Regulation, Inc.  
**RE:** Listed Company Compliance Guidance for **NYSE MKT Foreign Private Issuers**  
**DATE:** January 12, 2016

Each year, the staff of NYSE Regulation prepares a memo highlighting recent developments and ongoing policies applicable to foreign private issuers listed on NYSE MKT (“NYSE MKT” or the “Exchange”). The purpose of this memo is to provide a summary of Exchange policies and rules that most commonly impact foreign private issuers. A complete text of Exchange rules can be found online in the [NYSE MKT Company Guide](#)<sup>1</sup> (“Company Guide”) which has a search feature and a “What’s New” tab to highlight recent rule amendments. A [Summary Guide of Filing and Notice Requirements Applicable to NYSE MKT Listed Issuers](#) is also available on our website. In addition, our staff is always available to answer questions on these and other rules. Contact information for relevant NYSE MKT personnel is provided at the end of this memo. We hope you find this information helpful and encourage you to provide a copy of this memo to appropriate executives and outside advisers who have responsibility for handling matters related to your listing on NYSE MKT. All questions may be directed to the contacts listed on page 6.

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### **Laws, Customs and Practices of Country of Domicile**

The Exchange recognizes that every corporate entity must operate in accordance with the laws and customary practices of its country of origin or incorporation. Therefore, pursuant to [Section 110](#) of the [Company Guide](#), the Exchange will consider the laws, customs and practices of the company’s country of domicile, to the extent not contrary to the federal securities laws (including but not limited to Rule 10A-3 under the Securities Exchange Act of 1934), regarding such matters as: (i) the election and composition of the board of directors; (ii) the issuance of quarterly earnings statements; (iii) shareholder approval requirements; and (iv) quorum requirements for shareholder meetings.

A company seeking relief under or from these provisions should provide written certification from independent local counsel that the non-complying practice is not prohibited by home country law. In addition, the company must provide English language disclosure of any significant ways in which its corporate governance practices differ from those followed by domestic companies pursuant to the Exchange’s standards. This disclosure may be provided on the company’s website but must be included in the company’s annual report distributed to shareholders in the United States.

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<sup>1</sup> Go to <http://wallstreet.cch.com/MKT/CompanyGuide/>.

## **IMPORTANT REMINDERS**

### **Record Dates, Shareholder Meeting/Proxy Matters, Redemptions and Conversions of Listed Securities and/or other Notifications to the Exchange**

#### **Record Dates:**

In order to ensure that they are able 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. The Exchange disseminates record date information to the marketplace so that investors can plan their holdings accordingly. Listed companies are therefore required to notify the Exchange at least ten calendar days in advance of all record dates set for any purpose. If a listed company changes a record date, it must provide another advance notice of at least ten calendar days. Listed companies can comply with their Exchange notification obligations by emailing a copy of their notice to [proxyadmin@nyse.com](mailto:proxyadmin@nyse.com). Please note that record date notifications must be communicated directly to the Exchange and publication of a record date by means of a press release or United States Securities and Exchange Commission ("SEC") filing does not constitute notice to the Exchange.

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 business day.

The Exchange has no authority to waive its record date notification requirements, so strict compliance with the notification rules is essential to avoid situations where record dates or dates for shareholder meetings, dividends or other corporate actions must be reset.

#### **Meeting Dates:**

Listed companies are required to have an annual shareholders' meeting each fiscal year. The Exchange recommends that shareholders receive notice of a shareholders' meeting, along with proxy solicitation material, a minimum of 20 days before the meeting.

#### **Shareholder Meetings and Proxy Materials:**

Listed companies are required to solicit proxies for any annual or special meeting of shareholders. Three definitive copies of all proxy materials (including the proxy card) must be filed with the Exchange no later than the date on which such materials are sent to any security holder. If consents are to be used in lieu of a special meeting, notification to the Exchange is also required. Proxy materials should be sent to Market Watch, New York Stock Exchange, 11 Wall Street – 5<sup>th</sup> Floor Mailroom, New York, NY 10005.

#### **Redemption and Conversion of Listed Securities:**

Advance notice to the Exchange is required for any redemption or conversion of a listed security. The Exchange disseminates this information to the investing public and tracks redemptions and conversions to ensure that any reduction in securities outstanding does not result in noncompliance with the Exchange's distribution and market capitalization continued listing standards. Listed companies should

promptly contact their Corporate Actions analyst at 212-656-5505 prior to issuing an announcement about the redemption or conversion of a security that is listed on the Exchange.

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## **Annual Financial Statement Requirement**

[Section 610\(a\)](#) of the [Company Guide](#) requires a listed company to make its Form 10-K, 20-F or 40-F available on or by a link through its website simultaneously with the EDGAR filing. A listed issuer that does not distribute its proxy in accordance with the U.S. 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 which:
    - States that the Form 10-K, 20-F or 40-F 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.
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## **Corporate Governance Requirements**

### Written Affirmation and CEO Certification Requirements:

All companies listed on the Exchange are required to maintain certain corporate governance requirements. To ensure that listed companies are mindful of, and in compliance with, these ongoing obligations, the Exchange requires that listed companies file (i) an Annual Written Affirmation ("Annual Affirmation"); (ii) an Interim Written Affirmation ("Interim Affirmation"); and (iii) an Annual CEO Certification ("CEO Certification"). The Annual Affirmation and Interim Affirmation must be signed by an authorized officer of the company. The forms are available on the Exchange's [website](#).<sup>2</sup>

**i. Annual Affirmation:**

Listed companies are required to file an Annual Affirmation each calendar year. The Annual Affirmation requires companies to certify compliance (or, alternatively, report non-compliance) with certain of the Exchange's corporate governance rules and is due no later than 30 days after the company's annual shareholders' meeting (or, if the company is an entity that does not normally hold an annual shareholders' meeting, within 30 days after the company's Form 10-K is filed with the SEC).

**ii. Interim Affirmation:**

Listed companies are required to file an Interim Affirmation within five business days after the occurrence of certain triggering events. The list of triggering events that give rise to the obligation to file an Interim Affirmation will be specified on that form and include, among other things, change in the composition of the company's board of directors or certain committees thereof.

**iii. CEO Certification:**

A listed company's CEO is required to certify to the Exchange each year that he or she is not aware of any violation by the listed company of Exchange corporate governance listing

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<sup>2</sup> Go to <https://www.nyse.com/regulation/nyse-mkt/issuer-oversight>.

standards. The CEO Certification must be submitted simultaneously with the Annual Affirmation.

For information related to the Exchange's Corporate Governance requirements please refer to [Part 8](#) of the [Company Guide](#).

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### **Transactions Requiring Listing of Additional Shares Application**

A listed company is required to file a Listing of Additional Shares ("LAS") application to seek authorization from the Exchange for a variety of corporate events including, but not limited to:

- Issuance of additional shares of a listed security;
- 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;
- Issuance of a new class of security in substitution for a previously listed class of security;
- Issuance resulting from a transaction requiring a new Form 8-A to be filed with the SEC; and/or
- Change in country/state of incorporation.

No additional shares of a listed security may be issued until the Exchange has authorized an LAS application. Such authorization is required prior to issuance whether or not the security is to be registered with the SEC. The Exchange requests at least two weeks to review and authorize all applications. It is recommended that an LAS application be forwarded to the Exchange as soon as a listed company's board approves a transaction.

[Sections 301 through 333](#) of the [Company Guide](#) provide additional information on the timing and content of LAS applications and [Sections 711 through 713](#) of the [Company Guide](#) outline shareholder approval requirements for equity compensation plans and corporate transactions. As noted above, [Section 110](#) of the [Company Guide](#) enables foreign companies to rely on home country laws and practices in lieu of certain NYSE MKT listing requirements, including shareholder approval requirements. To avail itself of an exemption to a particular NYSE MKT shareholder approval rule under [Section 110](#), a foreign company must provide to NYSE MKT a one-time written certification from independent local counsel that the non-complying practice is not prohibited by home country law (see [Laws, Customs and Practices of Country of Domicile](#) above).

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### **Timely Alert/Material News Policy Reminder**

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, [Part 4](#) of the [Company Guide](#) requires listed companies to promptly release to the public any news or information which might reasonably be expected to materially affect the market for its securities. Listed companies must comply with the NYSE MKT's timely alert/material news policy by disseminating material news via a press release or any other Regulation FD-compliant method. Companies are required to call the Exchange when releasing material news during market hours. Specifically, if such news is to be released just prior to the opening at 9:30 a.m. or at any time between 9:30 a.m. and 4:00 p.m. Eastern Time, companies must call: (i) ten minutes before the dissemination of news that is

deemed to be of a material nature or that may have an impact on trading in the company's securities; or (ii) at the time the company becomes aware of a material event having occurred and take steps to promptly release the news to the public. While not intended to be an exhaustive list, examples of news the Exchange would consider to be potentially material include: earnings, mergers/acquisitions, redemptions/conversions, securities offerings and pricings related to these offerings, major product launches, new patent approvals and dividend announcements. The Timely Alert Policy also applies in connection with the verbal release of material news during the course of a management presentation, investor call or investor conference. Once notified by the company, the Market Watch team will determine whether a temporary trading halt is necessary to ensure that the news has been fully disseminated to the marketplace.

Companies are directed to call the Market Watch team when releasing news during market hours. In advance of issuance, companies must also email a copy of their press release to [nysealert@nyse.com](mailto:nysealert@nyse.com). It is important that the company's representative calling the Exchange be available during the Exchange's market hours and knowledgeable about the details of the news being issued in case questions arise. The Exchange reminds listed companies that the verbal release of material news during the course of a management presentation, investor call or investor conference that takes place during market hours is also subject to the timely alert/material news policy.

Outside of the hours set forth in the first paragraph above, companies are not required to call the Exchange in advance of issuing news, although companies should still provide a copy of material news by email to [nysealert@nyse.com](mailto:nysealert@nyse.com).

In instances of unusual market or rumor-driven trading activity, a company is expected to contact the Exchange and promptly release to the public any news or information that may reasonably be considered to be affecting the market in its securities. Where there is no knowledge of material news, a company may be contacted by the Exchange and asked to issue a press release promptly so that the activity/rumor can be addressed for the overall market.

Please note that while a listed company must determine whether a news event is material, it is the Exchange's obligation to institute a trading halt pending dissemination of news if the Exchange believes that news is material and the company has not yet disclosed the news in compliance with the Exchange's timely alert/material news policy. It is also the Exchange's obligation to resume trading once the news is broadly disseminated.

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### **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 for a particular quarter, at which time the company usually also makes a public announcement of the revised date. The Exchange believes that a change in the earnings announcement date can sometimes affect the trading price of a company's stock and/or related securities and that market participants who are in possession of this information before it is broadly disseminated may have an advantage over other market participants. Consequently, the Exchange believes that it is important for listed companies to promptly and broadly disseminate to the market non-selectively, news of the scheduling of their earnings announcements or any change in that schedule and to avoid selective disclosure of that information prior to its broad dissemination.

**NYSE MKT Contacts**

Record Dates Shareholder Meeting/Proxy Matters	Market Watch analyst at 877-699-2578 or 212-656-5414
Annual Financial Statements	212-656-4542
Corporate Governance	212-656-4542
Reliance on Laws, Customs, and Practices of Country of Domicile	212-656-5846
Listing of Additional Shares Applications	212-656-5846
Timely Alert/Material News Policy	Market Watch analyst at 877-699-2578 or 212-656-5414
Redemptions/Conversions Dividends	Corporate Actions analyst 212-656-5505