



TO: NYSE MKT Listed Company Executives
FROM: NYSE Regulation
RE: Listed Company Compliance Guidance for **NYSE MKT Foreign Private Issuers**
DATE: February 1, 2017

SUMMARY

Each year, the staff of NYSE Regulation prepares a memo highlighting recent developments and ongoing policies applicable to companies 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 listed companies. A complete text of Exchange rules can be found online in the [NYSE MKT Company Guide](#) (“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.

WHAT’S NEW FOR 2017

Listing Manager

In October 2016, the Exchange began to roll out the [Listing Manager](#), an integrated technology platform that will enable listed companies to easily connect with NYSE MKT and comply with key requirements. The modernized portal allows listed companies to manage their entire lifecycle, from pre-listing through listing, and assist in complying with NYSE MKT listing standards. It has been designed to further enhance automation, centralization of data, and resiliency.

The [Listing Manager](#) is available on www.nyse.com in the login section and listed companies are strongly encouraged to submit cash dividends and any form of stock distributions through this tool.

The modules related to compliance with listing standards are expected to be released in [Listing Manager](#) later this year.

Proposed Rule Changes Related to the Shortened Settlement Cycle (T+2)

On September 28, 2016, the SEC proposed amendments to Rule 15c6-1(a) to shorten the standard settlement cycle from T+3 to T+2. In order to conform its rules to the proposed amendments, the Exchange has proposed to adopt new rules to reflect “regular way” settlement as occurring on T+2 and which will, among other things, shorten the time period for which transactions in stocks shall be ex-dividend or ex-rights (the proposed rule change is available at <https://www.nyse.com/publicdocs/nyse/markets/nyse/rule-filings/filings/2016/NYSE-2016-76.pdf>).

The Exchange will not implement these proposed rules until after the final implementation of T+2. Currently, the industry target date for the transition to a T+2 settlement cycle is September 5, 2017. Please note the current target implementation date is contingent upon several factors, including approval of relevant rules and successful completion of industry-wide testing during Q2 and Q3 of 2017. The Exchange will communicate the implementation of the new rules once a compliance date has been announced by the SEC.

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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IMPORTANT REMINDERS

NYSE MKT 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, [Part 4](#) of the [Company Guide](#) require 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 may 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's Market Watch Group (at 212-656-5414 or 877-699-2578) when releasing material news any time between 7:00 a.m. Eastern Time ("ET") and the end of the NYSE MKT trading session (4:00 p.m. ET). Specifically, 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 and provide a copy of any written form of that announcement at the same time via email to nysealert@nyse.com. While not intended to be an exhaustive list, examples of news the Exchange would consider to be potentially 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. 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.

In advance of issuance, a company must also provide the Exchange with a copy of the announcement, the Regulation FD-compliant method it intends to use to disseminate the news and how the Exchange can locate the information upon publication. This information should be emailed to 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.

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 that presentation.

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 once it is disclosed (submit via e-mail to nysealert@nyse.com).

Please note that 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.

In addition, between the hours of 7:00 a.m. ET and 9:25 a.m. ET, the Exchange will implement news pending trading halts only at the request of the company. Between the hours of 9:25 a.m. ET and 4:00 p.m. ET, 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 for all trading halts regardless of whether or not the halt was requested by the company.

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, 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.

Other Notifications to the Exchange - Record Dates, Shareholder Meeting/Proxy Matters, Redemptions and Conversions of Listed Securities, Etc.

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. The Exchange has established a uniform method for listed companies to follow when providing notice (see [Part 7](#) of the [Company Guide](#)).

Record date notifications can now be submitted electronically through [Listing Manager](#) for cash and stock distributions or can still be emailed to the Exchange (dividend@nyse.com). Please also 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 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 U.S. business day.

The Exchange has no authority to waive its record date notification requirement, so strict compliance with the notification rules is essential in order 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 & Proxy Compliance, New York Stock Exchange, 11 Wall Street – 5th Floor Mailroom, New York, NY 10005.

Redemption and Conversion of Listed Securities:

Advance notice to the Exchange is required for a full call 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. Accordingly, pursuant to [Part 4](#) of the [Company Guide](#), 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.

Annual Financial Statement Requirement

[Section 610\(a\)](#) of the [Company Guide](#) requires a listed company to make its Form 10-K, 20-F, 40-F or N-CSR available on or by a link through its website simultaneously with the EDGAR filing. 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 which:
 - 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 hard copy of the complete audited financial statements free of charge upon request.

Corporate Governance Requirements

Written Affirmation and CEO Certification Requirements:

All companies listed on the Exchange are required to comply with certain corporate governance standards. To facilitate reporting of compliance with these ongoing obligations, the Exchange requires that listed companies file an Annual Written Affirmation and CEO Certification each calendar year. These forms identify the Exchange's corporate governance rules and ask listed company executives to affirm their compliance. 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, 20-F or 40-F is filed with the SEC. The forms and instructions are also available on the Exchange's [website](#).

In addition, an Interim Written Affirmation must be filed promptly (within five business days) after any triggering event specified on that form.

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

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).

NYSE MKT CONTACTS

Listing Manager	212-656-4651 or ListingManager@nyse.com
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