



**TO:** NYSE American Listed Company Executives  
**FROM:** NYSE Regulation  
**RE:** Listed Company Compliance Guidance for **NYSE American Issuers**  
**DATE:** January 14, 2021

Each year, the staff of NYSE Regulation prepares a guidance memo for important rules and policies applicable to companies listed on NYSE American (“NYSE American” or the “Exchange”). A complete text of Exchange rules can be found online in the [NYSE American Company Guide](#) (“Company Guide”). Please note that this memo is applicable to all listed issuers, with any rule or policy differences for Domestic vs. Foreign Incorporated Issuers (“FIIs”) 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 NYSE American. We have also provided department contact information below. Please do not hesitate to contact the staff with any question or concern you may have.

### NYSE AMERICAN 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
Dividends/Distributions and related Record Dates	Corporate Actions analyst 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	212-656-4651 or <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. FII issuers identified within.

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## **IMPORTANT REMINDERS - ALL ISSUERS**

### **A. NYSE American 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](#) requires 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 NYSE American's Timely Alert/Material News policy by disseminating material news via a press release or any other Regulation FD-compliant method.

**When to Call the Exchange?** 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. ET and the end of the NYSE American trading session (4:00 p.m. ET). Specifically, companies must call:

- 10 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
- 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 electronically through [Listing Manager](#) or via email to [nysealert@nyse.com](mailto:nysealert@nyse.com).

While not 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.

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 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.

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. 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.

**When to Provide Written Notice?** 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 electronically through [Listing Manager](#) or via e-mail to [nysealert@nyse.com](mailto:nysealert@nyse.com).

Before making any public announcement with respect to a dividend or stock distribution, NYSE American listed companies are required to provide notice to the Exchange at least 10 minutes before making such announcement including when it is made outside of Exchange trading hours. Notices after trading hours should be submitted electronically through [Listing Manager](#) or can be emailed to [dividend@nyse.com](mailto:dividend@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.

### **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 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.
- Between the hours of 7:00 a.m. and 9:25 a.m. ET, the Exchange will implement news pending trading halts only at the request of the company.

The Exchange will resume trading once the news is broadly disseminated.

### **B. 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.

### **C. Annual Meeting Requirement**

Pursuant to Section 704 of the [Company Guide](#), each issuer listing common stock or voting preferred stock, and/or their equivalents, must hold an annual meeting of shareholders no later than one year after the end of the issuer's fiscal year. Please note that if a meeting is postponed or adjourned, the Exchange does not consider the company to have met the Section 704 requirement to hold an annual meeting.

### **D. 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. For this reason, the Exchange disseminates record date information to the marketplace so that investors can plan their holdings accordingly. Because the Exchange has no authority to waive its record

date notification requirement, summarized below, strict compliance is essential to avoid the need to reset record dates or dates for shareholder meetings, dividends or other corporate actions :

- 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.

Part 7 of the [Company Guide](#) establishes the methods for listed companies to provide record date notice:

- For cash and stock distributions, record date notifications can now be submitted electronically through [Listing Manager](#) or emailed to the Exchange ([dividend@nyse.com](mailto:dividend@nyse.com)).
- For shareholder meetings, record date notifications can 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.

#### **E. 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 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. 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.

#### **F. Requirements for Annual Reports**

Section 610(a) of the [Company Guide](#) requires a listed company to make its Forms 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 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 hard copy of the complete audited financial statements free of charge upon request.

## **G. Annual and Interim Written Affirmations of Compliance with Exchange Corporate Governance Requirements**

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

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 Annual Report is filed with the SEC. The Annual and Interim Written Affirmations and CEO Certification can be created and filed electronically through [Listing Manager](#). In addition, a listed company must file an Interim Written Affirmation promptly (within 5 business days) after any triggering event specified on that form.

## **H. 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 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; and/or
- Change in country/state of incorporation.

No additional shares of a listed security may be issued until the Exchange has authorized a SLAP. 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 a SLAP be submitted electronically through [Listing Manager](#) 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 SLAPs. In addition, pursuant to Section 120 of the [Company Guide](#), related party transactions must be subject to appropriate review and oversight by the company's audit committee or a comparable body of the board of directors prior to entering into the transaction. Particular attention should also be given to Sections 711, 712, 713 and 122 of the [Company Guide](#) (see **Shareholder Approval and Voting Rights Requirements** below) for Domestic companies. Generally, FIIs may follow home country practice in lieu of these requirements. Please consult the Exchange if you have any questions.

## **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. Rule 14a-13 requires that the search card be sent:

- at least 20 business days before the record date for the annual meeting; or
- at such later time as permitted by the rules of the national securities exchange on which the class of securities in question is listed.

NYSE American rules do not permit a listed company to send out its broker search card less than 20 business days before the record date for its annual meeting. Consequently, an NYSE American listed company must send out broker search cards at least 20 business days before the record date for its annual meeting.

### **B. NYSE American Rule 452, Voting by Member Organizations**

The Exchange reviews all listed company proxy materials to determine whether NYSE American member organizations that hold customer securities in “street name” accounts as brokers are allowed 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 preliminary, confidential ruling (subject to a final review upon receipt of definitive materials) on the permissibility of broker voting under Rule 452 – NYSE American Equities on each proposal included in the preliminary proxy statement. This preliminary 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 and important rights afforded to shareholders of companies listed on the Exchange. The matters on which shareholders may be required to vote include amendments to equity compensation plans and certain share issuances. Sections 711 through 713, of the [Company Guide](#) outline the Exchange’s shareholder approval requirements in this regard. Section 122 of the [Company Guide](#) 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 including 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; (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. Examples of transactions that adversely affect the voting rights of shareholders of the listed common stock include transactions 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.

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## **IMPORTANT REMINDERS: FOREIGN INCORPORATED ISSUERS**

### **A. 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 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 either on the company's website and/or in its annual report it is required to file with the SEC that includes audited financial statements (including on Forms 10-K, 20-F, or 40-F). If the disclosure is only available on the website, the annual report must so state and provide the web address at which the information may be obtained.