



NYSE Regulation Inc.
20 Broad Street
New York, New York 10005

TO: NYSE MKT Listed Company Executives
FROM: NYSE Regulation, Inc.
RE: Listed Company Compliance Guidance
DATE: January 12, 2015

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](#)¹ (“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 at page 7.

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 nysealert@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 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.

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

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:

The Exchange recommends that shareholders receive notice of a shareholders' meeting, along with proxy solicitation material, a minimum of 20 days before the meeting.

Proxy Materials:

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, 20 Broad Street – 5th Floor Mailroom, New York, NY 10005.

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 must be sent: (i) at least 20 business days before the record date for the annual meeting; or (ii) 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 MKT rules do not contain any provision permitting 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 MKT listed company must comply with the 20 business day requirement of SEC Rule 14a-13 when sending out broker search cards in advance of its annual meeting.

NYSE MKT Rule 452, Voting by Member Organizations:

The Exchange reviews all listed company proxy materials to determine whether NYSE MKT 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 NYSE MKT Rule 452 on each of the proposals 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.

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.

Annual Report Website Posting Requirement

[Section 610\(a\)](#) of the [Company Guide](#) requires a listed company to make its Form 10-K or N-CSR available on or by a link through its website simultaneously with the EDGAR filing.²

Corporate Governance

Written Affirmation and CEO Certification Rule Change:

The NYSE MKT recently submitted a proposed rule change to the SEC to amend its corporate governance listing standards. The new corporate governance listing standards, which the NYSE MKT expects to be effective February 1, 2015, will require listed companies to 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 will be available on the Exchange's [website](#).³

i. Annual Affirmation:

Listed companies will be 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 will be 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 will be 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 the form and include,

² A listed company that does not 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 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.

³ Go to <https://www.nyse.com/regulation/nyse-mkt/issuer-oversight>.

among other things, changes in the composition of the company's board of directors or certain committees thereof.

iii. CEO Certification:

A listed company's CEO will be 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 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](#).

The Exchange will provide more detailed information about the affirmation and certification process closer to the effective date of the proposed rule change and will be available to answer any questions you may have about completing and submitting these forms.

Annual Meeting:

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. At each annual meeting, shareholders must be afforded the opportunity to discuss company affairs with management and, if required by the issuer's governing documents, to elect directors.

Transactions Requiring Listing of Additional Shares Applications

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:

- 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;
- 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. 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).

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. Among the matters on which shareholders may be entitled to vote include amendments to equity compensation plans and certain share issuances. [Sections 711 through 713](#), respectively, of the [Company Guide](#) outline the Exchange's shareholder approval requirements in this regard. [Section 122](#) 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, but not limited to, 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 impact the voting rights of existing shareholders of the listed class of common stock, as such transactions may violate the Exchange's voting rights rule (see [Section 122](#) of the [Company Guide](#)). Examples of transactions which adversely affect the voting rights of shareholders of the listed common stock include transactions which 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.

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. 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. 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. 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. 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.

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.

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
Listing of Additional Shares Applications	212.656.5846
Shareholder Approval Voting Rights	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