



TO: NYSE 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 the New York Stock Exchange (“NYSE” 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 Listed Company Manual](#)¹ (“Listed Company Manual”) which has a search feature and a “What’s New” tab to highlight recent rule amendments. In addition, our staff is always available to answer questions on these and other rules. Contact information for relevant NYSE 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 the NYSE. All questions may be directed to the contacts listed at page 8.

[egovdirect.com](#)

[egovdirect.com](#) is the Exchange’s complimentary, interactive compliance website. It is designed to help listed companies meet their corporate governance and compliance obligations efficiently and effectively by anticipating and notifying users of important filing dates and then providing an acknowledgment that such filing obligations have been met. Users of [egovdirect.com](#) are able to capture, submit, classify and archive all governance and corporate reporting requirements electronically.

The website enables listed companies to replace most telephonic and hard copy filings and notices to the Exchange with electronic reporting. Examples of notifications that can be submitted to the Exchange via [egovdirect.com](#) include the reporting of dividends, shareholders’ meetings and shares outstanding; submission of news releases; and changes to directors and officers. Users can also create, submit and archive annual and interim written affirmations electronically on [egovdirect.com](#) instead of filing hard copies with the Exchange.

We strongly encourage listed companies to take advantage of [egovdirect.com](#) and are happy to provide an online demonstration.

WHAT’S NEW: NYSE Late Filer Policy

The Exchange recently submitted a proposed rule change to the Securities and Exchange Commission (“SEC”) to revise its policy with respect to listed companies that do not timely file their periodic reports with the SEC. It is important that investors have access to accurate and current disclosure about the

¹ Go to <http://nysemanual.nyse.com/lcm/>.

business and financial position of companies listed on the Exchange. Under current Exchange rules, it is only when a company fails to timely file its annual report that it becomes noncompliant and subject to specific cure periods. Going forward, however, the Exchange is proposing to establish cure periods for quarterly reports that are not timely filed and those reports that are defective in certain respects. The Exchange expects the proposed rule change to become effective on March 1, 2015 and specific changes to the Exchange's late filer rule include:

1. The new rule will be expanded to cover quarterly reports on Form 10-Q in addition to annual reports (Forms 10-K, 20-F, 40-F or N-CSR). Accordingly, any listed company that fails to file a quarterly or annual report by the date on which it is due to be filed with the SEC will be subject to the provisions of Section 802.01E of the Listed Company Manual.
2. The new rule will be expanded to cover annual or quarterly reports that are deemed to be defective either at the time of their filing with the SEC or subsequently thereto. Among the reasons that a periodic report may be deemed defective include (i) an annual report that was filed without a financial statement audit report from its independent auditor for any or all periods included in the report, (ii) a company's independent auditor subsequently withdraws its audit report from a previously filed report, or (iii) a company discloses that previously filed financial statements should no longer be relied upon. If a listed company's period report is deemed to be defective for one of the foregoing reasons, such company will be subject to the cure provisions of Section 802.01E of the Listed Company Manual.
3. Listed companies will have a maximum of twelve months to cure a delinquent or defective filing and regain compliance. In order to be deemed back in compliance, listed companies must have cured the initial delinquent or defective filing and be current with all subsequent filings within the maximum twelve month cure period.

For a complete description of the Exchange's new late filer policy, please see the [proposed rule text](#).

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. The Exchange has established a uniform method for listed companies to follow when providing notice (see [Section 204.00](#) of the [Listed Company Manual](#)). Record date notifications can be

easily submitted electronically through egovdirect.com.² 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 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 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:

The Exchange recommends a 30-calendar day period between the record date and meeting date.

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 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 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.

Quorum 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 (i.e., the number of votes cast in favor of the proposal exceeds the aggregate of votes cast against the proposal plus abstentions).

² Listed companies may also submit record date notifications by emailing a copy of the record date notice to the Exchange (nysealert@nyse.com).

NYSE Rule 452, Voting by Member Organizations:

The Exchange reviews all listed company proxy materials to determine whether NYSE 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 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. Accordingly, pursuant to [Sections 204.08, 204.22](#) and [311.01](#) of the [Listed Company Manual](#), 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 203.01](#) of the [Listed Company Manual](#) 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.³

Corporate Governance Requirements

Written Affirmation/CEO Certification Requirements:

All companies listed on the Exchange are required to maintain certain corporate governance standards. To ensure that listed companies are mindful of, and in compliance with, these ongoing obligations, the Exchange requires that listed companies file a Domestic Company Section 303A Annual Written Affirmation and a Domestic Company Section 303A Annual CEO Certification each calendar year. These

³ 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.

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 is filed with the SEC.

In addition, a Domestic Company Section 303A Interim Written Affirmation must be filed promptly (within five business days) after any triggering event specified on that form.

The Annual and Interim Written Affirmations and CEO Certification can be easily created and filed electronically through egovdirect.com. The forms and instructions are also available on the Exchange's [website](#).⁴

Frequently Asked Questions ("FAQs"):

FAQs about Section 303A Corporate Governance Standards can be found on the Exchange's [website](#).

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. In interpreting this rule, the Exchange considers an annual shareholders' meeting to be one at which directors are elected. Please note that if a meeting is postponed or adjourned without taking action on the election of directors, the Exchange does not consider the company to have met the [Section 302](#) requirement to hold an annual meeting.

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, 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 whether or not 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 applications. It is recommended that a SLAP be forwarded to the Exchange 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. Particular attention should also be given to [Sections 303A.08](#), [312.03](#) and [313](#) of the [Listed Company Manual](#) (see **Shareholder Approval and Voting Rights Requirements** below).

⁴ Go to <https://www.nyse.com/regulation/nyse/issuer-oversight#corporate-governance>.

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 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 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 313](#) of the [Listed Company Manual](#)). 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.

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](#).⁵

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, [Sections 201](#) and [202](#) of the [Listed Company Manual](#) 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'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 during NYSE trading hours (i.e., between 9:30 a.m. and 4:00 p.m. Eastern Time), companies must call: i) ten

⁵ Go to <http://usequities.nyx.com/regulation/listed-companies-compliance/corporate-governance>.

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, 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. 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 once it is disclosed (submit via e-mail 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 Contacts

egovdirect.com	212-656-4651 or egovdirect@nyse.com
Record Dates, Shareholder Meeting/Proxy Matters	Market Watch analyst at 877.699.2578 or 212.656.5414
Annual Financial Statements	See NYSE Issuer Oversight analyst contact on egovdirect.com or 212-656-4542
Corporate Governance	See NYSE Issuer Oversight analyst contact on egovdirect.com or 212-656-4542
Supplemental Listing Applications	See NYSE Issuer Oversight analyst contact on egovdirect.com or 212-656-5846
Shareholder Approval Voting Rights	See NYSE Issuer Oversight analyst contact on egovdirect.com or 212-656-5846
Timely Alert/Material News Policy	Market Watch analyst at 877.699.2578 or 212.656.5414
Redemptions/Conversions Dividends	Corporation Actions analyst at 212.656.5505