

# NYSE Regulation

## Comparison of the Versions of the Domestic Company Section 303A Written Affirmation Forms and Instructions

### January 15, 2014 Update:

#### Domestic Company Section 303A Annual Written Affirmation

- Added a reference in Item A that additional information for compensation committee members is provided on Exhibit C.
- Specified in Item E that the company has a compensation committee meeting the requirements of Section 303A.05 or is relying on a transition pursuant to Section 303A.00.
- Specified in Item E information required to be submitted on Exhibit C for each compensation committee member: brief description of any source of compensation including consulting, advisory or other compensatory fee paid by the company to such member as specified in Section 303A.02(a)(ii) and indication of whether the compensation committee member is affiliated with the company, a subsidiary of the company or affiliate of a subsidiary of the company as specified in Section 303A.02(a)(ii).
- Specified that if the compensation committee member does not have any fee arrangements with the company and/or is not an affiliate of the company or its subsidiaries a statement to that effect that is made on Exhibit C.
- Specified that if the company is relying on the transition provided in Section 303A.00 to comply with the new compensation committee independence standards set forth in Section 303A.02(a)(ii) and the second paragraph of the Commentary to Section 303A.02(a), a brief description of the basis for such reliance, the names of an committee member relying on the transition and the expected compliance date, if known is provided on Exhibit C.
- Specified that if the company is relying on the compensation committee independence cure period provided in Section 303A.00 because a member of the compensation committee ceases to be independent for reasons outside the member's reasonable control, a brief description of the basis for such reliance and the names of any such committee member relying on the cure is provided on Exhibit C.

#### Domestic Company Section 303A Interim Written Affirmation

- Added one event requiring submission of a Domestic Company Section 303A Interim Written Affirmation:
  - A member of the compensation committee is relying on the independence cure period provided for in Section 303A.
- Added a reference in Item C that additional information for compensation committee members is provided on Exhibit C.
- Specified in Item F that the company has a compensation committee meeting the requirements of Section 303A.05 or is relying on a transition pursuant to Section 303A.00.
- Specified in Item F information required to be submitted on Exhibit C for each compensation committee member: brief description of any source of compensation including consulting, advisory or other compensatory fee paid by the company to such member as specified in Section 303A.02(a)(ii) and indication of whether the compensation committee member is

affiliated with the company, a subsidiary of the company or affiliate of a subsidiary of the company as specified in Section 303A.02(a)(ii).

- Specified that if the compensation committee member does not have any fee arrangements with the company and/or is not an affiliate of the company or its subsidiaries a statement to that effect that is made on Exhibit C.
- Specified that if the company is relying on the transition provided in Section 303A.00 to comply with the new compensation committee independence standards set forth in Section 303A.02(a)(ii) and the second paragraph of the Commentary to Section 303A.02(a), a brief description of the basis for such reliance, the names of an committee member relying on the transition and the expected compliance date, if known is provided on Exhibit C.
- Specified that if the company is relying on the compensation committee independence cure period provided in Section 303A.00 because a member of the compensation committee ceases to be independent for reasons outside the member's reasonable control, a brief description of the basis for such reliance and the names of any such committee member relying on the cure is provided on Exhibit C.

#### Instructions for Submission of Domestic Company Section 303A Written Affirmations

- Added one event requiring submission of an Domestic Company Section 303A Interim Written Affirmation:
  - A member of the compensation committee is relying on the independence cure period provided for in Section 303A.
- Specified in the answer to Q9 and new Q11 that if certain information required on Exhibit C is available through an SEC filing the company can specify the location of such disclosure on the exhibit in lieu of restating the information.
- Added a reference in the answer to Q10 that additional information for compensation committee members must be provided on Exhibit C.
- Specified in the answer to new Q11 what information must be provided on Exhibit C for each compensation committee member.
- Specified in the answer to new Q12 what information must be provided on Exhibit C if the company is relying on a transition provided in Section 303A.00 to comply with the new compensation committee independence standards.
- Specified in the answer to new Q13 what information must be provided on Exhibit C if the company is relying on the compensation committee independence cure period provided in Section 303A.00.
- Specified in the answer to new Q14, Q16 and Q17 what information must be provided for a company that is a smaller reporting company and relies on the smaller reporting company compensation committee exemption.
- Specified in new Q18 what information must be provided when a company ceases to qualify as a smaller reporting company for purposes of Section 303A.

#### **July 1, 2013 Update:**

##### Domestic Company Section 303A Annual Written Affirmation

- Added two types of listed companies:
  - A smaller reporting company that has common equity securities listed on the NYSE and relies on the smaller reporting company compensation committee exemption
  - A smaller reporting company that is a business development company and relies on the smaller reporting company compensation committee exemption
- Added references to the two new company types in applicable Items of the affirmation.
- Updated rule numbers for the NYSE independence standards.

- Added a statement in Item E with respect to compliance with the compensation committee rules set forth in Section 303A.05 for the two new company types.
- Updated NYSE Regulation, Inc. logo and made other formatting changes.

Exhibit F to Domestic Company Section 303A Annual and Interim Written Affirmation

- Updated NYSE Regulation, Inc. logo and made other formatting changes.

Exhibit G to Domestic Company Section 303A Annual Written Affirmation

- Updated NYSE Regulation, Inc. logo and made other formatting changes.

Exhibit I to Domestic Company Section 303A Annual Written Affirmation

- Updated NYSE Regulation, Inc. logo and made other formatting changes.

Domestic Company Section 303A Annual CEO Certification

- Updated NYSE Regulation, Inc. logo and made other formatting changes.

Domestic Company Section 303A Interim Written Affirmation

- Added three events requiring submission of a Domestic Company Section 303A Interim Written Affirmation:
  - The company determined that it no longer qualifies as a smaller reporting company under Section 303A.
  - The company no longer qualifies as a smaller reporting company and is now subject to the applicable requirements of Section 303A.
  - The company has become a smaller reporting company for purposes of Section 303A and relies on the smaller reporting company compensation committee exemption.
- Defined Smaller Reporting Company Determination Date for purposes of Section 303A.
- Added two types of listed companies:
  - A smaller reporting company that has common equity securities listed on the NYSE and relies on the smaller reporting company compensation committee exemption
  - A smaller reporting company that is a business development company and relies on the smaller reporting company compensation committee exemption
- Added references to the two new company types in applicable Items of the affirmation.
- Updated rule numbers for the NYSE independence standards.
- Added a statement in Item F with respect to compliance with the compensation committee rules set forth in Section 303A.05 for the two new company types.
- Updated NYSE Regulation, Inc. logo and made other formatting changes.

Exhibit J to Domestic Company Section 303A Interim Written Affirmation

- Added references to the two new company types.
- Updated NYSE Regulation, Inc. logo and made other formatting changes.

Exhibit K to Domestic Company Section 303A Interim Written Affirmation

- Added references to the two new company types.
- Updated NYSE Regulation, Inc. logo and made other formatting changes.

Instructions for Submission of Domestic Company Section 303A Written Affirmations

- Updated NYSE website address in the answers to Q1, Q3, Q5 and Q9.
- Specified that a smaller reporting company that is relying on the smaller reporting company compensation committee exemption must submit a hard copy of its affirmation using the form

available on the Exchange's public website rather than filing such affirmation through egovdirect in the answers to Q1, Q3 and Q5.

- Added three events requiring submission of an Domestic Company Section 303A Interim Written Affirmation in the answer to Q3:
  - The company determined that it no longer qualifies as a smaller reporting company under Section 303A.
  - The company no longer qualifies as a smaller reporting company and is now subject to the applicable requirements of Section 303A.
  - The company has become a smaller reporting company for purposes of Section 303A and relies on the smaller reporting company compensation committee exemption.
- Updated the Corporate Compliance department mailing address in the answer to Q17.
- Updated NYSE Regulation, Inc. logo and made other formatting changes.

### **February 1, 2010 Update:**

#### Domestic Company Section 303A Annual Written Affirmation

- Changed information required to be submitted on Exhibit A for each independent director (brief biography; brief description of any relationship that would be required to be disclosed pursuant to Item 404 of Regulation S-K). Noted that the company must indicate on Exhibit A if the director does not have any such relationship.

#### Domestic Company Section 303A Interim Written Affirmation

- Changed information required to be submitted on Exhibit A for each independent director (brief biography; brief description of any relationship that would be required to be disclosed pursuant to Item 404 of Regulation S-K). Noted that the company must indicate on Exhibit A if the director does not have any such relationship.

#### Instructions for Submission of Domestic Company Section 303A Written Affirmations

- Updated the information required to be submitted for an independent director on Exhibit A to the Domestic Company Section 303A Annual or Interim Written Affirmation in the answer to Q10.

### **January 4, 2010 Update:**

#### Domestic Company Section 303A Annual Written Affirmation

- Added a requirement for all companies (not just those that list common equity securities on the NYSE and business development companies) to submit Exhibit A.
- Changed information required to be submitted on Exhibit A for each director (director's title and employer/other affiliation; board class and or term end date, if applicable) and information required for each independent director (brief biography; brief description of any relationships that are covered by the Section 303A.02(b) bright line independence tests regardless of whether the thresholds set forth in such tests have been breached). Noted additional information is required to be submitted for audit committee members listed on Exhibit E.
- Specified that if a director does not have any relationships that are covered by Section 303A.02(b) a statement to that effect is made on Exhibit A.
- Added Section 303A.02 director independence to the header for Item B.
- Added statement in Item B that the company has a board of directors meeting the requirements of Section 303A.01.

- Eliminated from Item B(1) the reference to the extended transition provided in the General Application section of Section 303A for directors who were no longer deemed independent as a result of the November 3, 2004 change to Section 303A.02(b)(iii).
- Eliminated references to Exhibit A from Item B as the exhibit is now required for all companies and is included in Item A.
- Added a new Item C for Section 303A.03 executive sessions and renumbered remaining sections.
- Added statement in new Item D that the company has a nominating/corporate governance committee meeting the requirements of Section 303A.04.
- Added statement in new Item E that the company has a compensation committee meeting the requirements of Section 303A.05.
- Combined old Items E (Section 303A.06) and Item F (Section 303A.07) into new Item F.
- Eliminated the requirement in old Item E to provide a brief biography for audit committee members on Exhibit E if such information had not been provided on Exhibit A as such information is now required for independent directors of all companies (see Item A).
- Specified information required to be submitted on Exhibit E for each audit committee member (share ownership of the company; brief description of any direct or indirect consulting, advisory or other compensatory fee arrangement with the company or any of its subsidiaries as specified in Securities Exchange Act Rule 10A-3(b)(1) (“Rule 10A-3”); indication of whether the audit committee member is an affiliated person or “interested person” as defined in Section 2(a)(19) of the Investment Company Act of 1940 as specified in Rule 10A-3(b)(1)).
- Specified that if the audit committee member does not own any shares of the company, does not have any fee arrangements with the company or its subsidiaries and/or is not an affiliated person or “interested person” of the company or its subsidiaries a statement to that effect that is made on Exhibit E.
- Consolidated other required audit committee information into a new “All companies” subsection of new Item F.
- Noted in new Item F that if a member of the audit committee is not financially literate, a specific timetable by which financial literacy will be attained is provided on Exhibit E.
- Specified in more detail the information required on Exhibit F for a company or individual member of an audit committee claiming a Rule 10A-3 exemption.
- Updated rule numbers for the audit committee charter (Section 303A.07(b)) and internal audit (Section 303A.07(c)) requirements to reflect renumbering in Section 303A.07 following approval of changes to Section 303A in SR-NYSE-2009-89.
- Added website posting requirements to Item I following approval of changes to Section 303A in SR-NYSE-2009-89.
- Replaced requirement for a closed-end management investment company to file Exhibit G with a requirement to file, if applicable, new Exhibit I for Section 303A.07(a) disclosure.
- Changed reference from Corporate Governance department to Corporate Compliance department.
- Made text and formatting changes to conform to other Section 303A forms.

#### Exhibit F to Domestic Company Section 303A Annual and Interim Written Affirmation

- Created a form of Exhibit F for a company to submit if it or an individual member of its audit committee is relying on a Rule 10A-3 exemption; previously the form was not specified. Noted that if a company is submitting the exhibit with the Domestic Company Section 303A Annual Written Affirmation because it is claiming the Rule 10A-3(b)(1)(iv)(A) exemption, such company also must provide on Exhibit G the location of the required Rule 10A-3(d) disclosures.

Exhibit G to Domestic Company Section 303A Annual Written Affirmation

- Specified that if a company makes required Section 303A disclosure in its annual proxy statement, or if the company does not file an annual proxy statement, in its annual report filed with the Securities and Exchange Commission (“SEC”), it may incorporate such disclosure by reference from another document that is filed with the SEC to the extent permitted by applicable SEC rules following approval of changes to Section 303A in SR-NYSE-2009-89.
- Revised Section 303A.00 Controlled Companies to reflect disclosure required by Instruction 1 to Item 407(a) of Regulation S-K and the required location of such disclosure following approval of changes to Section 303A in SR-NYSE-2009-89.
- Revised Section 303A.02(a) to reflect disclosure required by Item 407(a) of Regulation S-K and the required location of such disclosure following approval of changes to Section 303A in SR-NYSE-2009-89.
- Revised Sections 303A.02(b)(v), 303A.03 and 303A.07(a) to reflect ability to provide required disclosures either on or through the company’s website or in its annual proxy statement following approval of changes to Section 303A in SR-NYSE-2009-89. Specified that if such disclosure is provided on the company’s website, the company must disclose that fact in its annual proxy statement or annual report on Form 10-K and provide the website address.
- Revised Section 303A.03 to reflect that the disclosure pertains to the director presiding over meetings of non-management or independent directors following approval of changes to Section 303A in SR-NYSE-2009-89.
- Revised Section 303A.03 to reflect that the disclosure pertains to a method for all interested parties (not just shareholders) to communicate with the presiding director or with the non-management or independent directors as a group following approval of changes to Section 303A in SR-NYSE-2009-89.
- Eliminated reference to Section 303A.09 from Sections 303A.04, 303A.05 and 303A.07(c) as the committee charter website posting requirements were moved to applicable subsections of the rule following approval of changes to Section 303A in SR-NYSE-2009-89.
- Added the requirement to disclose the website address of where the nominating/ corporate governance, compensation and audit committee charters, corporate governance guidelines and code of business conduct and ethics are available on the company’s website in Sections 303A.04, 303A.05, 303A.07(b), 303A.09 and 303A.10 and eliminated requirement to disclose that these documents are available in print to any shareholder who requests them from those sections following approval of changes to Section 303A in SR-NYSE-2009-89.
- Revised the Section 303A.06 disclosure to include only the Rule 10A-3(b)(1)(iv)(A) exemption, if applicable, to eliminate redundancy with information required on the new specified form of Exhibit F to the Domestic Company Section 303A Annual and Interim Written Affirmation. Clarified that such disclosure, if applicable, must be made in the annual proxy statement or information statement and annual report on Form 10-K. Eliminated the description of available Rule 10A-3 exemptions on page 7 of the form as such descriptions are provided on new Exhibit F.
- Updated rule number for the audit committee charter (Section 303A.07(b)) to reflect renumbering in Section 303A.07 following approval of changes to Section 303A in SR-NYSE-2009-89.
- Eliminated the requirement to provide the location of the Section 303A.10 disclosure of waivers of the code of business conduct and ethics since such disclosure may be made at any time.
- Eliminated Section 303A.12(a) NYSE CEO and Sarbanes-Oxley Section 302 certification disclosure requirements following approval of changes to Section 303A in SR-NYSE-2009-89.
- Made text and formatting changes to conform to other Section 303A forms.

Exhibit I to Domestic Company Section 303A Annual Written Affirmation

- Created new Exhibit I for a closed-end management investment company to file when the Section 303A.07(a) disclosure requirement is applicable.

Domestic Company Section 303A Annual CEO Certification

- Changed reference from Corporate Governance department to Corporate Compliance department.

Domestic Company Section 303A Interim Written Affirmation

- Added two events requiring submission of an Domestic Company Section 303A Interim Written Affirmation and reordered existing list of events:
  - The company or a member of its audit committee is eligible to rely on and is choosing to rely on a Rule 10A-3 exemption
  - The company or a member of its audit committee is no longer eligible to rely on or is choosing to no longer rely on a previously applicable Rule 10A-3 exemption.
- Added a requirement for all companies (not just those that list common equity securities on the NYSE and business development companies) to submit Exhibit A.
- Changed information required to be submitted on Exhibit A for each director (director's title and employer/other affiliation; board class and/or term end date, if applicable) and information required for each independent director (brief biography; brief description of any relationships that are covered by the Section 303A.02(b) bright line independence tests regardless of whether the thresholds set forth in such tests have been breached). Noted additional information is required to be submitted for audit committee members listed on Exhibit E.
- Specified that if a director does not have any relationships that are covered by Section 303A.02(b) a statement to that effect is made on Exhibit A.
- Added Section 303A.02 director independence to the header for Item D.
- Added statement in Item D that the company has a board of directors meeting the requirements of Section 303A.01.
- Eliminated from Item D(1) the reference to the extended transition provided in the General Application section of Section 303A for directors who were no longer deemed independent as a result of the November 3, 2004 change to Section 303A.02(b)(iii).
- Eliminated references to Exhibit A from Item D as the exhibit is now required for all companies and is included in Item C.
- Added statement in Item E that the company has a nominating/corporate governance committee meeting the requirements of Section 303A.04.
- Added statement in Item F that the company has a compensation committee meeting the requirements of Section 303A.05.
- Combined old Items G (Section 303A.06) and H (Section 303A.07) into Item G.
- Eliminated the requirement in Item G to provide a brief biography for audit committee members on Exhibit E if such information had not been provided on Exhibit A as such information is now required for independent directors of all companies (see Item C).
- Specified information required to be submitted on Exhibit E for each audit committee member (share ownership in the company; brief description of any direct or indirect consulting, advisory or other compensatory fee arrangement with the company or any of its subsidiaries as specified in Rule 10A-3(b)(1); indication of whether the audit committee member is an affiliated person or "interested person" as defined in Section 2(a)(19) of the Investment Company Act of 1940 as specified in Rule 10A-3(b)(1)).
- Specified that if the audit committee member does not own any shares of the company, does not have any fee arrangements with the company or its subsidiaries and/or is not an affiliated

person or “interested person” of the company or its subsidiaries a statement to that effect is made on Exhibit E.

- Consolidated other required audit committee information into a new “All companies” subsection of Item G.
- Noted in Item G that if a member of the audit committee is not financially literate, a specific timetable by which financial literacy will be attained is provided on Exhibit E.
- Specified in more detail the information required on Exhibit F for a company or individual member of an audit committee claiming a Rule 10A-3 exemption.
- Added new Item H to specify other Section 303A requirements applicable when a company is no longer a controlled company for purposes of Section 303A or ceases to qualify as a foreign private issuer and has become a domestic company for purposes of Section 303A. Noted that the company must provide the location of the Section 303A website postings that are then applicable on new Exhibits J or K.
- Changed reference from Corporate Governance department to Corporate Compliance department.
- Made text and formatting changes to conform to other Section 303A forms.

#### Exhibit J to Domestic Company Section 303A Interim Written Affirmation

- Created new Exhibit J for a company that ceases to be a controlled company for purposes of Section 303A to provide the location of the Section 303A website postings that are then applicable.

#### Exhibit K to Domestic Company Section 303A Interim Written Affirmation

- Created new Exhibit K for a company that ceases to qualify as a foreign private issuer and has become a domestic company for purposes of Section 303A to provide the location of the Section 303A website postings that are then applicable.

#### Instructions for Submission of Domestic Company Section 303A Written Affirmations

- Updated NYSE website address in the answers to Q1, Q3, Q5, Q9 and new Q15.
- Updated NYSE email addresses in the answers to Q1, Q8, new Q15 and new Q16.
- Revised when a company that lists in conjunction with an initial public offering is required to file its first Domestic Company Section 303A Annual Written Affirmation in the answer to Q2.
- Specified that a Domestic Company Section 303A Interim Written Affirmation must be submitted within five business days of an event requiring submission of that form in the answers to Q3.
- Added two events requiring submission of a Domestic Company Section 303A Interim Written Affirmation and reordered existing list of events in the answer to Q3:
  - The company or a member of its audit committee is eligible to rely on and is choosing to rely on a Rule 10A-3 exemption
  - The company or a member of its audit committee is no longer eligible to rely on or is choosing to no longer rely on a previously applicable Rule 10A-3 exemption.
- Specified that the requirement to submit a Domestic Company Section 303A Interim Written Affirmation applies immediately after a company is listed in the answer to Q3.
- Revised the information regarding the Section 303A.12(b) notification to state that a company is to promptly notify the NYSE of any noncompliance with Section 303A in the answer to Q6 following approval of SR-NYSE-2009-89.
- Changed reference from Corporate Governance department to Corporate Compliance department in the answers to Q8, new Q15 and new Q16.
- Provided a list of exhibits to the Domestic Company Section 303A Annual and Interim Written Affirmations and noted the forms of exhibits that have been specified in the answer to Q9.



- Specified that every company must submit Exhibit A to the Domestic Company Section 303A Annual or Interim Written Affirmation and identified what information is required on the exhibit in the answer to Q10.
- Specified that a timetable to attain financial literacy must be provided on Exhibit E if a member of the audit committee is not financially literate in the answer to Q11.
- Specified additional information that must be submitted for all audit committee members on Exhibit E in the answer to Q11.
- Added a new question 12 to address what information is required to be provided on Exhibit F if a company or an individual member of the audit committee is relying on a Rule 10A-3 exemption.
- Added a new question 13 to specify what information is required to be submitted when a company ceases to be a controlled company for purposes of Section 303A.
- Added a new question 14 to specify what information is required to be submitted when a company ceases to qualify as a foreign private issuer and has become a domestic company for purposes of Section 303A and renumbered remaining questions.
- Provided the Corporate Compliance email address in the answer to new Q16.
- Made text and formatting changes to conform to other Section 303A instructions.

**August 25, 2006 Update:**

Domestic Company Section 303A Annual Written Affirmation

- Eliminated the language regarding board adoption of the nominating/corporate governance, compensation and audit committee charters, corporate governance guidelines and code of ethics and business conduct from Items C, D, F, G and H.

**April 28, 2006 Update:**

Domestic Company Section 303A Annual Written Affirmation

- Added new NYSE Regulation, Inc. logo.
- Added company's ticker symbol on first line.
- Eliminated the reference to the transition provided in the General Application section of Section 303A for companies with classified boards which expired on December 31, 2005 from Item B(1) and Item B(2).
- Simplified text in Item I.
- Made text and formatting changes to conform to other Section 303A forms.

Exhibit G to Domestic Company Section 303A Annual Written Affirmation

- Added new NYSE Regulation, Inc. logo.
- Added company's ticker symbol on first line.
- Added references to Section 303A.09 in column 1 on pages 3 and 4.
- Made text and formatting changes to conform to other Section 303A forms.

Domestic Company Section 303A Annual CEO Certification

- Added new NYSE Regulation, Inc. logo.
- Added company's ticker symbol on first line.
- Added boxes to check if the Domestic Company Section 303A Annual CEO Certification is filed without qualification or with qualification to conform to certifications submitted through egovdirect.com.
- Made text and formatting changes to conform to other Section 303A forms.

Domestic Company Section 303A Interim Written Affirmation

- Added new NYSE Regulation, Inc. logo.
- Added company's ticker symbol on first line.
- Added new Items A and B to conform to other Section 303A forms; renumbered remaining sections.
- Eliminated the reference to the transition provided in the General Application section of Section 303A for companies with classified boards which expired on December 31, 2005 from new Item D(1) and new Item D(2).
- Modified the Certification to conform to other Section 303A forms.
- Made text and formatting changes to conform to other Section 303A forms.

Instructions for Submission of Domestic Company Section 303A Written Affirmations

- Added new NYSE Regulation, Inc. logo.
- Added that the Domestic Company Section 303A Written Affirmations/Annual CEO Certification may be submitted electronically through [egovdirect.com](http://egovdirect.com) in the answers to Q1, Q3 and Q5.
- Specified how to locate certain information on [www.nyse.com](http://www.nyse.com) in the answers to Q1, Q3 Q5, Q9 and new Q12.
- Added [egovdirect](http://egovdirect.com) registration information in the answers to Q1 and new Q12.
- Added that Section 303A.12(b) requires a company to promptly notify the NYSE of any material noncompliance with Section 303A in the answer to Q6.
- Added the Corporate Governance department telephone number in the answer to Q8.
- Added information about Section 303A Interim Written Affirmation exhibits in the answer to Q9.
- Clarified the information required on Exhibit A in the answer to Q10.
- Added new Q12.
- Updated the Corporate Governance department mailing address in the answer to new Q13.
- Made text and formatting changes to conform to other Section 303A instructions.