

# NYSE Regulation

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

**Q1: When must a Domestic Company Section 303A Annual Written Affirmation be submitted?**

**A:** A Domestic Company Section 303A Annual Written Affirmation must be submitted annually within 30 days of a company's annual shareholders' meeting. If the company is an entity that does not normally hold an annual shareholders' meeting (e.g., a limited partnership), the form must be submitted within 30 days of the date the company files its annual report on Form 10-K with the Securities and Exchange Commission ("SEC").

The Domestic Company Section 303A Annual Written Affirmation may be submitted electronically through [egovdirect.com](http://egovdirect.com). To register, contact [egovdirect](tel:212.656.4651) at 212.656.4651 or [egovdirect@nyx.com](mailto:egovdirect@nyx.com).

A form of the Domestic Company Section 303A Annual Written Affirmation is also provided on the Exchange's public website.<sup>1</sup> 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 public website.

**Q2: When does a company that listed in connection with an initial public offering need to submit its first Domestic Company Section 303A Annual Written Affirmation?**

**A:** A company that listed on the NYSE in connection with its initial public offering is required to submit its first Domestic Company Section 303A Annual Written Affirmation 30 days after its first annual meeting. If the company is an entity that does not normally hold an annual shareholders' meeting (e.g., a limited partnership), the form must be submitted within 30 days of the date the company files its first annual report on Form 10-K with the SEC after its listing.

**Q3: When must a Domestic Company Section 303A Interim Written Affirmation be submitted?**

**A:** A Domestic Company Section 303A Interim Written Affirmation must be submitted within five business days of when:

- A director who was deemed independent is no longer independent
- A director who was not deemed independent is deemed independent
- A director has been added to the company's board
- A director has left the company's board
- The composition of the company's nominating/corporate governance committee has changed
- The composition of any other committee to which the prescribed duties of the nominating/corporate governance committee have been reallocated has changed

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<sup>1</sup> <http://usequities.nyx.com/regulation/listed-companies-compliance/corporate-governance/forms>

- The composition of the company's compensation committee has changed
- The composition of any other committee to which the prescribed duties of the compensation committee have been reallocated has changed
- A member of the compensation committee is relying on the cure period for compensation committee independence noncompliance provided for in Section 303A.00
- The composition of the company's audit committee has changed
- The company or a member of its audit committee is eligible to rely on and is choosing to rely on a Securities Exchange Act Rule 10A-3 ("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
- The company is no longer a controlled company for purposes of Section 303A
- The company has become a controlled company for purposes of Section 303A
- The company no longer qualifies as a foreign private issuer and has become a domestic company for purposes of Section 303A
- The company determined that it no longer qualifies as a smaller reporting company for purposes of Section 303A
- The company no longer qualifies as a smaller reporting company for purposes of Section 303A and is 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

The requirement to submit a Domestic Company Section 303A Interim Written Affirmation applies immediately after a company is listed.

A Domestic Company Section 303A Interim Written Affirmation may be submitted electronically through [egovdirect.com](http://egovdirect.com). A form of the Domestic Company Section 303A Interim Written Affirmation is also provided on the Exchange's public website.<sup>2</sup> 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 public website.

**Q4: Who must sign a Domestic Company Section 303A Written Affirmation on behalf of the company?**

**A:** An authorized officer of the company.

**Q5: When and how should the Domestic Company Section 303A Annual CEO Certification be submitted?**

**A:** The Domestic Company Section 303A Annual CEO Certification must be submitted simultaneously with the Domestic Company Section 303A Annual Written Affirmation. It may be submitted electronically through [egovdirect.com](http://egovdirect.com). A form of the Domestic Company Section 303A Annual CEO Certification is also provided on the Exchange's public website.<sup>3</sup> 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 public website.

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<sup>2</sup> <http://usequities.nyx.com/regulation/listed-companies-compliance/corporate-governance/forms>

<sup>3</sup> <http://usequities.nyx.com/regulation/listed-companies-compliance/corporate-governance/forms>

**Q6: If a company is out of compliance with any requirement of Section 303A as of the date it submits its Domestic Company Section 303A Annual or Interim Written Affirmation, what should be submitted?**

**A:** A company must submit a Domestic Company Section 303A Annual or Interim Written Affirmation with all required exhibits, regardless of its status, with a check mark in the appropriate box indicating the absence of compliance. It must submit Exhibit H noting the standard it is not in compliance with, the reason for such noncompliance, and a specific timetable for the company's return to compliance.

Section 303A.12(b) also requires a company's CEO to promptly notify the NYSE of any noncompliance with Section 303A.

**Q7: Is a company required to submit a Section 303A.12(b) notice of noncompliance if it has submitted a Domestic Company Section 303A Interim Written Affirmation to the NYSE?**

**A:** If a company has submitted a Domestic Company Section 303A Interim Written Affirmation relating to a specific event of noncompliance that is signed by its CEO, it does not need to also submit a Section 303A.12(b) notice of noncompliance. If the Domestic Company Section 303A Interim Written Affirmation was not signed by the company's CEO, a Section 303A.12(b) notice of noncompliance signed by the CEO must be separately submitted to the NYSE.

**Q8: Can a company modify and/or retype the Domestic Company Section 303A Annual or Interim Written Affirmation forms onto its letterhead?**

**A:** No. The PDF version of the Domestic Company Section 303A Annual and Interim Written Affirmations provided by the NYSE must be executed without modification. No Section 303A Annual or Interim Written Affirmation will be accepted if it has been retyped, modified or if any text has been deleted. If there are any questions regarding applicability of the text to a company's specific circumstances, contact the Corporate Compliance department prior to submission at 212.656.4542 or [corporategovernance@nyx.com](mailto:corporategovernance@nyx.com).

**Q9: What format must be utilized for the Domestic Company Section 303A Annual and Interim Written Affirmation exhibits?**

**A:** The forms of certain exhibits, denoted by an \* in the list below, are specified and PDF versions are available on the Exchange's public website.<sup>4</sup> All other required Domestic Company Section 303A Annual and Interim Written Affirmation exhibits can be typed free form on a company's letterhead. If any of the biographical information required to be provided on Exhibits A, C or E to the Domestic Company Section 303A Annual or Interim Written Affirmation is available through an SEC filing, the company can specify the location of such disclosure on the exhibit in lieu of restating the information. All required exhibits must state the company's name and be included with the Domestic Company Section 303A Annual or Interim Written Affirmation when it is submitted.

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<sup>4</sup> <http://usequities.nyx.com/regulation/listed-companies-compliance/corporate-governance/forms>

## List of exhibits

Addendum A	Description of the Event Resulting in the Interim Written Affirmation Filing
Exhibit A to Domestic Company Section 303A Annual and Interim Written Affirmation	Board of directors (Section 303A.01)
Exhibit B to Domestic Company Section 303A Annual and Interim Written Affirmation	Nominating/corporate governance committee (Section 303A.04)
Exhibit C to Domestic Company Section 303A Annual and Interim Written Affirmation	Compensation committee (Section 303A.05)
Exhibit D	Reserved
Exhibit E to Domestic Company Section 303A Annual and Interim Written Affirmation	Audit committee (Sections 303A.06 and 303A.07)
Exhibit F* to Domestic Company Section 303A Annual and Interim Written Affirmation	Rule 10A-3 Audit Committee Exemption Details (Section 303A.06)
Exhibit G* to Domestic Company Section 303A Annual Written Affirmation	Section 303A Disclosures and Website Postings
Exhibit H to Domestic Company Section 303A Annual and Interim Written Affirmation	Description of Noncompliance
Exhibit I* to Domestic Company Section 303A Annual Written Affirmation	Section 303A.07(a) Disclosure
Exhibit J* to Domestic Company Section 303A Interim Written Affirmation	Website Postings
Exhibit K* to Domestic Company Section 303A Interim Written Affirmation	Website Postings

**Q10: What information must be provided for each director required to be listed on Exhibit A to the Domestic Company Section 303A Annual or Interim Written Affirmation?**

**A:** Every company must provide a list of the current directors of the company on Exhibit A to the Domestic Company Section 303A Annual or Interim Written Affirmation. Each director deemed independent under applicable requirements of Section 303A must be marked with an asterisk.

The company must provide the following information for each director listed on Exhibit A:

- title and employer/other affiliation; and
- board class and/or term end date, if applicable.

In addition, the company must provide the following information for each independent director listed on Exhibit A:

- brief biography;
- brief description of any relationship that would be required to be disclosed pursuant to Item 404 of Regulation S-K.

The company must indicate on Exhibit A if the director does not have any such relationship.

Note: Additional information must be provided for compensation committee members listed on Exhibit C (see Q11 below) and for audit committee members listed on Exhibit E (see Q11 below).

If current biographical information is available through an SEC filing, the company can specify the location of such disclosure on Exhibit A instead of restating the information. If the information is not current, the company must provide up-to-date information on Exhibit A.

**Q11: What information must be provided for each compensation committee member required to be listed on Exhibit C to the Domestic Company Section 303A Annual or Interim Written Affirmation?**

If the company has its common equity securities listed on the NYSE or is a business development company, it must provide on Exhibit C the following 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);
- 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).

The company must indicate on Exhibit C 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.

If current biographical information is available through an SEC filing, the company can specify the location of such disclosure on Exhibit C instead of restating the information. If the information is not current, the company must provide up-to-date information on Exhibit C.

**Q12: What information must be provided if the company is relying on a transition provided in Section 303A.00 to comply with the new compensation committee independence standards?**

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 any such committee member relying on the transition and the expected compliance date, if known, must be provided on Exhibit C to the Domestic Company Annual or Interim Written Affirmation.

**Q13: What information must be provided if the company is relying the compensation committee independence cure period provided in Section 303A.00?**

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 must be provided on Exhibit C to the Domestic Company Annual or Interim Written Affirmation.

**Q14: What information must be provided for each audit committee member required to be listed on Exhibit E to the Domestic Company Section 303A Annual or Interim Written Affirmation?**

**A:** A company must indicate which audit committee members are financially literate and which have accounting or related financial management expertise. While Section 303A.07(a) requires only one member of the audit committee to have accounting or related financial management expertise, a company must indicate all members who have such expertise. If a member of the audit committee is not financially literate, the company must provide on Exhibit E a specific timetable by which financial literacy will be attained.

If the company has its common equity securities listed on the NYSE, qualifies as a controlled company and relies on the controlled company exemption, is a limited partnership, is in bankruptcy or is a smaller reporting company that has common equity securities listed on the NYSE and relies on the smaller reporting company compensation committee exemption, it must provide the following 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)(ii)(A);
- indication of whether the audit committee member is an affiliated person of the company or any of its subsidiaries as specified in Rule 10A-3(b)(1)(ii)(B).

The company must indicate on Exhibit E 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 of the company or its subsidiaries.

If the company is a closed-end management investment company, business development company, or smaller reporting company that is a business development company and relies on the smaller reporting company compensation committee exemption, it must provide the following 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)(iii)(A);
- indication of whether the audit committee member is an “interested person” of the company as defined in Section 2(a)(19) of the Investment Company Act of 1940 as specified in Rule 10A-3(b)(1)(iii)(B).

The company must indicate on Exhibit E 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 “interested person”.

If current biographical information is available through an SEC filing, the company can specify the location of such disclosure on Exhibit E instead of restating the information. If the information is not current, the company must provide up-to-date information on Exhibit E.

**Q15: What information must be provided if the company or an individual member of its audit committee is relying on a Rule 10A-3 exemption?**

**A:** If the company or an individual member of its audit committee is relying on a Rule 10A-3 exemption, a brief description of the basis for such reliance, a citation to the relevant portion of Rule 10A-3 and the name of the individual relying on the exemption, if applicable, must be provided on Exhibit F to the Domestic Company Section 303A Annual or Interim Written Affirmation.

**Q16: What information must be provided when a company ceases to be a controlled company for purposes of Section 303A?**

**A:** If a company ceases to be a controlled company for purposes of Section 303A it must file a Domestic Company Section 303A Interim Affirmation within five business days of the date its status changed and check the appropriate boxes on that form. In addition, if the company has its common equity securities listed on the NYSE, is a business development company, is a smaller reporting company that has common equity securities listed on the NYSE and relies on the smaller reporting company

compensation committee exemption or is a smaller reporting company that is a business development company and relies on the smaller reporting company compensation committee exemption, it must provide on Exhibit J the location of the Section 303A website postings that are then applicable.

**Q17: What information must be provided when a company ceases to qualify as a foreign private issuer and has become a domestic company for purposes of Section 303A?**

**A:** If a company ceases to qualify as a foreign private issuer and has become a domestic company for purposes of Section 303A, it must file a Domestic Company Section 303A Interim Affirmation within five business days of the date it becomes a domestic company required to file on domestic forms with the SEC and check the appropriate boxes on that form. In addition, if the company has its common equity securities listed on the NYSE, qualifies as a controlled company and relies on the controlled company exemption, is a limited partnership, is in bankruptcy, is a business development company, is a smaller reporting company that has common equity securities listed on the NYSE and relies on the smaller reporting company compensation committee exemption or is a smaller reporting company that is a business development company and relies on the smaller reporting company compensation committee exemption, it must provide on Exhibit K the location of the Section 303A website postings that are then applicable.

**Q18: What information must be provided when a company ceases to qualify as a smaller reporting company for purposes of Section 303A?**

**A:** If a company ceases to qualify as a smaller reporting company and will become a company that has its common equity securities listed on the NYSE or a business development company for purposes of Section 303A, it must file a Domestic Company Section 303A Interim Affirmation within five business days of the Smaller Reporting Company Determination Date to notify the Exchange of the change. The Smaller Reporting Company Determination Date is defined for purposes of Section 303A.00 to be the date at the end of the company's most recently completed second fiscal quarter when it tested its status as a smaller reporting company under Securities Exchange Act Rule 3b-4. Such company must also file a Domestic Company Section 303A Interim Written Affirmation six months after the date it ceases to be a smaller reporting company and check the appropriate boxes on that form.

**Q19: Where else can a domestic company find information relating to the requirements to file Section 303A Written Affirmations and other Section 303A issues?**

**A:** The NYSE has posted a series of Frequently Asked Questions ("FAQs") on the Exchange's public website.<sup>5</sup> A company may also contact the Corporate Compliance department at 212.656.4542 or [corporategovernance@nyx.com](mailto:corporategovernance@nyx.com). For questions regarding egovdirect.com, a company may contact the egovdirect staff at 212.656.4651 or [egovdirect@nyx.com](mailto:egovdirect@nyx.com).

**Q20: How should completed Domestic Company Section 303A Annual and Interim Written Affirmations be submitted to the NYSE?**

**A:** The Domestic Company Section 303A Annual and Interim Written Affirmations may be submitted electronically through egovdirect.com.

Alternatively, the completed forms may be emailed, faxed or mailed as provided below. As noted in Q1 above, a smaller reporting company that is relying on the smaller reporting company compensation committee exemption must submit a hard copy of its affirmation by email, fax or mail.

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

Email: [corporategovernance@nyx.com](mailto:corporategovernance@nyx.com)

Fax: 212.656.5780

Mail: Corporate Compliance Department  
NYSE Regulation, Inc.  
20 Broad Street, 23<sup>rd</sup> floor  
New York, NY 10005  
Telephone: 212.656.4542