

# NYSE Regulation

## Instructions for Submission of Foreign Private Issuer Section 303A Written Affirmations

**Q1: When must a Foreign Private Issuer Section 303A Annual Written Affirmation be submitted?**

**A:** A Foreign Private Issuer Section 303A Annual Written Affirmation must be submitted annually within 30 days of the date a company files its annual report on Form 10-K, 20-F or 40-F with the U.S. Securities and Exchange Commission.

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

A form of the Foreign Private Issuer Section 303A Annual Written Affirmation is also provided on [www.nyx.com](http://www.nyx.com); click on "Information: For Listed Companies" then "Corporate Governance Forms".

**Q2: When must a Foreign Private Issuer Section 303A Interim Written Affirmation be submitted?**

**A:** A Foreign Private Issuer Section 303A Interim Written Affirmation must be submitted within five business days of when:

- An audit committee member who was deemed independent is no longer independent
- A member has been added to the audit committee
- 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
- A member has been removed from the company's audit committee resulting in the company no longer having a Rule 10A-3 compliant audit committee
- The company determined that it no longer qualifies as a foreign private issuer and will be considered a domestic company under Section 303A.

A Foreign Private Issuer Section 303A Interim Written Affirmation may be submitted electronically through [egovdirect.com](http://egovdirect.com). A form of the Foreign Private Issuer Section 303A Interim Written Affirmation is also provided on [www.nyx.com](http://www.nyx.com); click on "Information: For Listed Companies" then "Corporate Governance Forms".

**Q3: Who must sign a Foreign Private Issuer Section 303A Written Affirmation on behalf of the company?**

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

**Q4: If a company is out of compliance with any requirement of Section 303A.06 or Section 303A.11 as of the date it submits its Foreign Private Issuer Section 303A Annual or Interim Written Affirmation, what should be submitted?**

**A:** A company must submit a Foreign Private Issuer 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 A noting the standard it is not in compliance with, the reason for such noncompliance and a specific timetable for its return to compliance.

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

**Q5: Is a company required to submit a Section 303A.12(b) notice of noncompliance if it has submitted a Foreign Private Issuer Section 303A Interim Written Affirmation to the NYSE?**

**A:** If a company has submitted a Foreign Private Issuer 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 Foreign Private Issuer 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.

**Q6: Can a company modify and/or retype the Foreign Private Issuer Section 303A Annual or Interim Written Affirmation forms onto its letterhead?**

**A:** No. The PDF version of the Foreign Private Issuer 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 at 212.656.4542 or [corporategovernanceintl@nyx.com](mailto:corporategovernanceintl@nyx.com).

**Q7: What format must be utilized for the Foreign Private Issuer 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 [www.nyx.com](http://www.nyx.com); click on "Information: For Listed Companies" then "Corporate Governance Forms". All other required Foreign Private Issuer 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 Exhibit C to the Foreign Private Issuer Section 303A Annual or Interim Written Affirmation is available through a U.S. Securities and Exchange Commission 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 Foreign Private Issuer Section 303A Annual or Interim Written Affirmation when it is submitted.

List of exhibits

Addendum A	Description of the Event Resulting in the Interim Written Affirmation Filing
Exhibit A to Foreign Private Issuer Section 303A Annual and Interim Written Affirmation	Description of Noncompliance
Exhibit B to Foreign Private Issuer Section 303A Annual Written Affirmation*	Rule 10A-3 Audit Committee Exemption Details (Section 303A.06) and Statement of Significant Differences (Section 303A.11)
Exhibit C to Foreign Private Issuer Section 303A Annual and Interim Written Affirmation	Audit committee (Section 303A.06)
Exhibit D to Foreign Private Issuer Section 303A Interim Written Affirmation*	Rule 10A-3 Audit Committee Exemption Details (Section 303A.06)

**Q8: What information must be provided for each audit committee member required to be listed on Exhibit C to the Foreign Private Issuer Section 303A Annual or Interim Written Affirmation?**

**A:** A company must provide a list of the current members of the audit committee on Exhibit C to the Foreign Private Issuer Section 303A Annual or Interim Written Affirmation. Each audit committee member deemed independent must be marked with an asterisk and, if an audit committee member is claiming a Rule 10A-3 exemption, the exemption claimed must be noted on Exhibit C.

In addition, the company must provide the following on Exhibit C for each member of the audit committee who is also a director:

- brief biography;
- 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 C 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 current biographical information is available through a U.S. Securities and Exchange Commission 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.

**Q9: 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 a 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 B to the Foreign Private Issuer Section 303A Annual Written Affirmation or Exhibit D to the Foreign Private Issuer Section 303A Interim Written Affirmation, as applicable.

**Q10. What information must be provided when a company ceases to qualify as a foreign private issuer and will become a domestic company for purposes of Section 303A?**

**A:** If a company ceases to qualify as a foreign private issuer and will become a domestic company for purposes of Section 303A, it must file a Foreign Private Issuer Section 303A Interim Affirmation within five business days of the Determination Date. The 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 foreign private issuer under Securities Exchange Act Rule 3b-4.

In addition, when a foreign private issuer becomes a domestic company required to file on domestic forms with the U.S. Securities and Exchange Commission (six months after the Determination Date) it must file a Domestic Company Section 303A Interim Written Affirmation within five business days of that date and check the appropriate boxes on that form. 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 business development company, it must also provide on Exhibit K to the Domestic Company Section 303A Interim Written Affirmation the location of the Section 303A website postings that are then applicable.

**Q11: Where else can a foreign private issuer 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 [www.nyx.com](http://www.nyx.com); click on "Information: For Listed Companies" then "Listed Company Corporate Governance". FAQs A-7, A-8(B), F-3 and H-1 through H-5 relate specifically to foreign private issuers. A company may also contact the Corporate Compliance department at 212.656.4542 or [corporategovernanceintl@nyx.com](mailto:corporategovernanceintl@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).

**Q12: How should completed Foreign Private Issuer Section 303A Annual and Interim Written Affirmations be submitted to the NYSE?**

**A:** The Foreign Private Issuer Section 303A Annual and Interim Written Affirmations may be submitted electronically through egovdirect.com.

Alternatively, the completed forms may be emailed, faxed or mailed to:

Email: [corporategovernanceintl@nyx.com](mailto:corporategovernanceintl@nyx.com)  
Fax: 212.656.5780  
Mail: Corporate Compliance Department  
NYSE Regulation, Inc.  
20 Broad Street, 13<sup>th</sup> Floor  
New York, NY 10005  
Telephone: 212.656.4542