

TO: NYSE American Listed Company Executives
FROM: NYSE Regulation
RE: Listed Company Compliance Guidance for **NYSE American Issuers**
DATE: January 17, 2023

Each year, the staff of NYSE Regulation prepares a guidance memo for important rules and policies applicable to companies listed on NYSE American (“NYSE American” or the “Exchange”). A complete text of Exchange rules can be found online in the [NYSE American Company Guide](#) (“Company Guide”). Please note that this memo is applicable to all listed issuers, with any rule or policy differences for Domestic vs. Foreign Incorporated Issuers (“FIIs”) identified within. We encourage you to provide a copy of this memo to appropriate executives and outside advisers who handle matters related to your listing on NYSE American. We have also provided department contact information below. Please do not hesitate to contact the staff with any question or concern you may have.

What’s New

On October 26, 2022, the SEC adopted final rules requiring the recovery of erroneously awarded compensation: [Listing Standards for Recovery of Erroneously Awarded Compensation](#), which will become effective 60 days following publication in the [Federal Register](#), which occurred on November 28, 2022. New Rule 10D-1 of the Securities Exchange Act of 1934 mandates that exchanges adopt listing standards that will apply disclosure and compensation recovery policy requirements to all listed issuers, with only limited exceptions. Each listed issuer will be required to adopt a compensation recovery policy, comply with that policy, and provide the necessary compensation recovery policy disclosures. An issuer will be subject to delisting if it does not adopt and comply with a compensation recovery policy that satisfies the listing standards. The Exchange must adopt listing standards to address these requirements within 90 days following publication of the SEC rules in the Federal Register.

NYSE AMERICAN CONTACTS

Shareholder Meeting, Proxy Matters, and related Record Dates	Market Watch analyst at 877-699-2578 or 212-656-5414 proxyadmin@nyse.com
Timely Alert / Material News Policy	Market Watch analyst at 877-699-2578 or 212-656-5414 nysealert@nyse.com
Corporate Governance	Corporate Governance analyst at 212-656-4542 corporategovernance@nyse.com
SLAPs / Shareholder Approval, Voting Rights	Issuer Regulation analyst at 212-656-5846 or via Listing Manager SLAP submission
Dividends/Distributions and related Record Dates	Dividend Group analyst at 212-656-5438 dividend@nyse.com
Corporate Actions (Redemptions, Stock Split, etc.)	Corporate Actions analyst at 212-656-5439 corporateactions@nyse.com
Listing Manager	Listing Manager analyst at 212-656-4651 listingmanager@nyse.com

IMPORTANT REMINDERS

This appendix is applicable to all listed issuers, with any rule or policy differences for Domestic vs. FII issuers identified within.

The following topics are covered below:

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IMPORTANT REMINDERS: ALL ISSUERS

A. NYSE American Timely Alert/Material News Policy

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 that might reasonably be expected to materially affect the market for its securities. Listed companies may comply with the Timely Alert/Material News policy by disseminating material news via a press release or any other Regulation FD-compliant method.

While a listed company must use its own discretion to determine whether a news event is material, the Exchange should be consulted if there is any uncertainty regarding the materiality of the announcement. Examples of news the Exchange would generally consider to be material include: earnings, mergers/acquisitions, executive changes, redemptions/conversions, securities offerings and pricings related to these offerings, major product launches, regulatory rulings, new patent approvals, and dividend or major repurchase announcements.

Please note that the Timely Alert/Material News policy also applies in connection with the verbal release of material news during the course of a management presentation, investor call, or investor conference. The fact that any such presentation is conducted in compliance with Regulation FD does not mean that the listed company is exempt from compliance with the Timely Alert/Material News policy in connection with any material news provided in the course of the presentation.

Material News Released During the Trading Day: Companies are required to call the Exchange's Market Watch Group (at 212-656-5414 or 877-699-2578) when intending to release material news between 7:00 a.m. ET and the end of the NYSE American trading session (4:00 p.m. ET). Specifically, a company must call:

- 10 minutes before the dissemination of news that is of a material nature or that may have an impact on trading in the company's securities, including any dividend or stock distribution; or
- promptly upon becoming aware of a material event having occurred (that was beyond the company's control). The company must also take steps to promptly release the news to the public.

A company must provide the Exchange with a copy of any material announcement, with information about the Regulation FD-compliant method it intends to use to disseminate the news and how the Exchange can locate the news upon publication. This information should be submitted electronically through [Listing Manager](#) or 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.

Material News Released Outside Trading Hours: Outside of the hours 7:00 a.m. ET and the end of the NYSE trading session (4:00 p.m. ET), companies are generally 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, by submitting electronically through [Listing Manager](#) or via e-mail to nysealert@nyse.com.

NYSE American listed companies are required to provide notice to the Exchange at least 10 minutes before making any public announcement with respect to a dividend or stock distribution, including when it is made outside of Exchange trading hours.

When will the Exchange Halt Trading?

- Between the hours of 9:25 a.m. and 4:00 p.m. ET, it is the Exchange's practice to institute a trading halt pending dissemination of news if the Exchange believes that the news is material and the company has not yet disclosed the news in compliance with the Exchange's Timely Alert/Material News policy.
- Between the hours of 7:00 a.m. and 9:25 a.m. ET, the Exchange will implement a news pending trading halt only at the request of the company.

The Exchange will resume trading once the material news is broadly disseminated.

B. Changes to the Date of a Listed Company's Earnings Release

Generally, listed companies publicly announce the date on which they intend to issue their quarterly earnings information. Occasionally, a company needs to change the date of its earnings release. Because a change in the earnings announcement date may affect the trading price of a company's stock and/or related securities, it is important for listed companies to promptly and broadly disseminate any date change to the market non-selectively.

C. Annual Meeting Requirement

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. Please note that if a meeting is postponed or adjourned, the Exchange does not consider the company to have met the Section 704 requirement to hold an annual meeting.

D. Record Date Notification

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. Companies determine their own record date, and the Exchange disseminates the record date information to the marketplace so that investors can plan their holdings accordingly. To facilitate this process:

- Listed companies are required to notify the Exchange at least 10 calendar days in advance of all record dates.
- A listed company that changes a record date must provide another advance notice to the Exchange of at least 10 calendar days.
- A listed company's publication of a record date by means of a press release or SEC filing does not constitute notice to the Exchange.

Part 7 of the [Company Guide](#) establishes the methods for listed companies to provide record date notice:

- For cash and stock distributions, record date notifications should be submitted electronically through [Listing Manager](#) or emailed to the Exchange (dividend@nyse.com).
- For shareholder meetings, record date notifications should be submitted through [Listing Manager](#) or emailed to the Exchange (proxyadmin@nyse.com).

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 announcement should make clear that the effective record date is the immediately preceding U.S. business day.

E. Redemption and Conversion of Listed Securities

Advance notice to the Exchange is required for a full call redemption or conversion of a listed security. Pursuant to Part 4 of the [Company Guide](#), a listed company should promptly contact its Corporate Actions analyst at 212-656-5439 prior to issuing such an announcement. The Exchange disseminates this information to the public and tracks redemptions and conversions to ensure that any reduction in securities outstanding does not result in an issuer's noncompliance with the Exchange's distribution and market capitalization continued listing standards.

F. Requirements for Annual Reports

Section 610(a) of the [Company Guide](#) requires a listed company to make its Forms 10-K, 20-F, 40-F, or N-CSR available on or by a link through its website simultaneously with the EDGAR filing.

Separately, a listed company that is not required to 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 that:
 - States that the Form 10-K, 20-F, 40-F, or N-CSR has been filed with the SEC;
 - Includes the company's website address; and
 - Indicates that shareholders have the ability to receive a hard copy of the complete audited financial statements free of charge upon request.

G. Annual and Interim Written Affirmations of Compliance with Exchange Corporate Governance Requirements

The Exchange requires that listed companies file an Annual Written Affirmation and CEO Certification each calendar year. For information related to the Exchange's Corporate Governance requirements please refer to Part 8 of the [Company Guide](#).

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 Annual Report is filed with the SEC. In addition, a listed company must file an Interim Written Affirmation promptly (within 5 business days) after any triggering event specified on that form. The Annual and Interim Written Affirmations and CEO Certification can be filed electronically through [Listing Manager](#). The Annual Written Affirmation and CEO Certification are automatically created by Listing Manager and the Interim Written Affirmation can be created by a Listing Manager user. Please consult the Exchange if you believe an Annual Written Affirmation and CEO Certification record needs to be created.

H. Change in Officers

In addition to reporting changes to the board of directors via a Written Affirmation, prompt notice is required to be given to the Exchange of any change in officers pursuant to Section 921 of the [Company Guide](#). These changes should be reported to the company's Listings representative so that contact information can be updated. Please also note that a change in officer may trigger the Exchange's Timely Alert/Material News Policy.

I. 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 of additional shares of a listed security;
- 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; and/or
- Change in country/state of incorporation.

No additional shares of a listed security may be issued until the Exchange has authorized a SLAP. Such authorization is required prior to issuance, regardless of whether the security is to be registered with the SEC. The Exchange requests at least two weeks to review and authorize all SLAPs. It is recommended that a SLAP be submitted electronically through [Listing Manager](#) 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 SLAPs. Domestic companies should give particular attention to Sections 711, 712, 713 and 122 of the [Company Guide](#) (see [Shareholder Approval and Voting Rights Requirements](#) below). Generally, FILs may follow home country practice in lieu of these requirements. Please consult the Exchange if you have any questions.

J. Related Party Transactions

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.

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IMPORTANT REMINDERS: DOMESTIC ISSUERS

A. 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. As applicable to NYSE American listed companies, Rule 14a-13 requires that the search card be sent at least 20 business days before the record date for the annual meeting.

B. NYSE American Rule 452, Voting by Member Organizations

The Exchange reviews all listed company proxy materials to determine whether specific client instructions are necessary for an NYSE American member organization that holds customer securities in “street name” accounts as broker 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 view (subject to a final review upon receipt of definitive materials) on the permissibility of broker voting under Rule 452 – NYSE American Equities on each proposal included in the preliminary proxy statement. This early 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.

C. 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. The matters on which shareholders may vote include amendments to equity compensation plans and certain share issuances. Sections 711 through 713 of the [Company Guide](#) outline the Exchange’s shareholder approval requirements in this regard. Section 122 of the [Company Guide](#) 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. This includes 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 affect the voting rights of existing shareholders of the listed class of common stock, as such transactions may violate the Exchange’s voting rights requirements. Examples of transactions that adversely affect the voting rights of shareholders include those that 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.

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IMPORTANT REMINDERS: FOREIGN INCORPORATED ISSUERS

A. Laws, Customs and Practices of Country of Domicile

The Exchange recognizes that every corporate entity must operate in accordance with the laws and customary practices of its country of origin or incorporation. Therefore, pursuant to Section 110 of the [Company Guide](#), the Exchange will consider the laws, customs, and practices of the company's country of domicile, to the extent not contrary to the federal securities laws (including but not limited to Rule 10A-3 under the Securities Exchange Act of 1934), regarding such matters as: (i) the election and composition of the board of directors; (ii) the issuance of quarterly earnings statements; (iii) shareholder approval requirements; and (iv) quorum requirements for shareholder meetings.

A company seeking relief from Exchange rules based on the laws, customs, and practices of its country of domicile should provide written certification from independent local counsel that the non-complying practice is not prohibited by home country law. In addition, the company must provide English language disclosure of any significant ways in which its corporate governance practices differ from those followed by Domestic companies pursuant to the Exchange's standards. This disclosure may be provided either on the company's website and/or in the annual report it is required to file with the SEC that includes audited financial statements (including on Forms 10-K, 20-F, or 40-F). If the disclosure is only available on the website, the annual report must so state and provide the web address at which the information may be obtained.