

February 29, 2004

Update for NYSE listed companies

Following the release (on February 13, 2004) of an updated set of Frequently Asked Questions, on February 24, 2004, the NYSE published forms of certifications and affirmations, and related instructions for submissions of those documents, mandated by the new NYSE corporate governance rules for listed companies. The forms and instructions are available at <http://www.nyse.com>.

The following Update briefly summarizes the certifications and affirmations to be required of NYSE-listed companies. Domestic listed companies will be required to provide these documents during 2004, while non-U.S. listed companies will be required to provide these documents during 2005.

Required Submissions

CEO Certification

Listed companies are required under Rule 303A(12)(a) of the NYSE to submit to the NYSE a certificate signed by their CEO certifying that, as of the date of certification, he or she is unaware of any violation by the company of the NYSE's corporate governance rules.

The CEO Certification must be filed no later than 30 days after the listed company's annual shareholder meeting commencing with the company's first annual shareholder meeting held after January 15, 2004. For those companies that have already held their 2004 annual shareholder meeting, and would therefore have less than the requisite 30 days, the NYSE will require filing by March 24, 2004.

Annual Written Affirmation

Although not specifically required under the Rule 303A corporate governance rules, the NYSE, pursuant to general authority under the listing agreements with listed companies, also requires listed companies to submit to the Exchange an annual Written Affirmation relating to compliance with the Rule 303A corporate governance rules. Each listed company must submit to the NYSE an annual Written Affirmation in the form provided by the Exchange and signed by an authorized officer of the company. The Affirmation tracks each of the items of Rule 303A, and also has a set of exhibits on which listed companies provide a series of responses.

The timing for the annual Written Affirmation is the same as the timing for the CEO Certification, and the two would be submitted concurrently.

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Interim Written Affirmation

Listed companies are also required to submit to the NYSE a shorter interim Written Affirmation in the form provided by the Exchange:

- each time a director is added to, or removed from, the board and each time that the independence status of a director changes;
- each time that a change is made to the composition of the audit, nominating or compensation committees, or to the composition of any other committee to which the duties of the nominating or compensation committee have been reallocated; and
- if the listed company is no longer a “controlled company” for purposes of the NYSE corporate governance rules.

Written Affirmation on Audit Committee

Listed companies must submit to the NYSE a separate Written Affirmation in the form provided and signed by an authorized officer of the company that affirms compliance with the NYSE corporate governance rules applicable to audit committees. Written Affirmations must be submitted annually after the board appoints the audit committee and at any subsequent time when the composition of the audit committee changes.

Form of Written Affirmation

All Written Affirmations, annual or interim, must be executed in the form provided by the NYSE, without modification. The NYSE has expressly stated that it will not accept Written Affirmations that have been retyped or modified, or if any text has been deleted. Exhibits to the Written Affirmations may be typed “free form” on company letterhead, with the exception of Exhibit G. (Exhibit G sets forth the location of disclosures required to be provided in proxy statements and Form 10-Ks or on company web sites under Rule 303A or Rule 10A-3 under the Securities Exchange Act of 1934.) All required Exhibits must note the company’s name and be included with the Written Affirmation when it is submitted.

Foreign Private Issuers

Foreign private issuers listed on the NYSE are exempt from the Rule 303A(12)(a) CEO Certification requirement. However, the NYSE, pursuant to general authority under the listing agreements with listed companies, will require foreign private issuers to submit annual and interim Written Affirmations, commencing after their 2005 annual shareholder meeting. We understand on the basis of conversations with the NYSE General Counsel’s office that the forms of Written Affirmations applicable to foreign private issuers will be published by the NYSE at a later date. (Since foreign private issuers are generally not subject to Rule 303A requirements (other than in respect of independent audit committees), the forms will be different from the forms of Written Affirmations applicable to domestic companies currently published on the NYSE web site.)

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This memorandum provides only a general overview of certain provisions of the Act and is not intended to provide or constitute legal advice, and no legal or business decision should be based on its contents.

Any questions concerning the foregoing should be addressed to members of the Paul Weiss Securities Group (see below). In addition, memoranda on related topics may be accessed under Securities Group publications on our web site (www.paulweiss.com).

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