

# KIRKLAND ALERT

January 2016

## NYSE 2016 Compliance Guidance

On January 12, 2016, the NYSE released its annual recent developments memos for listed companies.

### Timely Alert Policy

The NYSE amended its policy on material news releases and related trading halts as follows:

**Market Close** A listed company should not release material news immediately after market close; it should release material news immediately after the earlier of the publication of its listed security's closing price and 15 minutes after market close according to new advisory guidance from the NYSE.

**Telephone Notice** If a listed company plans to release material news 7:00 a.m. – 4:00 p.m. (prior standard was shortly before the NYSE's 9:30 a.m. market open to the 5:00 p.m. end of the NYSE's off-hours trading session), ten minutes before the release, the listed company must email the NYSE a copy of the release and call the NYSE (+1 212 656 5414 or +1 877 699 2578).

**Trading Halt** The NYSE can halt trading in a listed company's securities if the company intends to release material news during market hours. The NYSE amended the Timely Alert Policy to give the NYSE additional rights to halt trading if:

- a listed company requests a trading halt and releases material news 7:00 a.m. – 9:30 a.m.;
- to request and evaluate certain information; or
- the listed security is an ADR and its home exchange halts trading.

### Changes to Earnings Release Date

Listed companies should publicly announce the schedule of their earnings announcements, and any changes, according to recently released guidance from the NYSE.

**Post-market close material news releases should be issued at 4:15 p.m. or later.**

### Shareholder Approval Policy — Early Stage Companies

NYSE rules require listed companies to obtain shareholder approval before issuing common stock (or securities convertible into common stock) to certain related parties for cash if the shares to be issued exceed 1% (or 5% if the sale is not below market and the purchaser is a related party solely because it is a substantial security holder) of the outstanding common shares (or voting power). The NYSE has created a new exception to this shareholder approval policy for “early stage companies” — companies that haven’t reported revenues greater than \$20 million in any two consecutive fiscal years since incorporation.

**Proposed 6-K requirement for FPIs to file semi-annual financials.**

### Foreign Private Issuers — Semi-Annual Reporting

The NYSE intends to propose to the SEC a rule change that would require foreign private issuers to file a Form 6-K with semi-annual unaudited financial information (including a balance sheet and income statement) no later than six months after the end of the foreign private issuer’s second fiscal quarter. A foreign private issuer is currently only required to file a 6-K with information it makes or is required to make public in its home country, distributes or is required to distribute to its securityholders or files with a stock exchange that trades its securities (and the stock exchange makes the information public).

### Annual Written Affirmation

As a reminder, the Annual Written Affirmation and CEO Certification for a listed company are due for:

- |                                |  |
|--------------------------------|--|
| <b>Domestic companies</b>      | 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 Form 10-K is filed with the SEC; or |
| <b>Foreign private issuers</b> | no later than 30 days after the company’s Form 20-F or 40-F is filed with the SEC.   |

[https://www.nyse.com/publicdocs/nyse/regulation/nyse/2016\\_NYSE\\_Listed\\_Company\\_Compliance\\_Guidance\\_Memo\\_for\\_Domestic\\_Companies.pdf](https://www.nyse.com/publicdocs/nyse/regulation/nyse/2016_NYSE_Listed_Company_Compliance_Guidance_Memo_for_Domestic_Companies.pdf)

[https://www.nyse.com/publicdocs/nyse/regulation/nyse/2016\\_NYSE\\_Listed\\_Company\\_Compliance\\_Guidance\\_Memo\\_for\\_Foreign\\_Private\\_Issuers.pdf](https://www.nyse.com/publicdocs/nyse/regulation/nyse/2016_NYSE_Listed_Company_Compliance_Guidance_Memo_for_Foreign_Private_Issuers.pdf)

---

If you have any questions about the matters addressed in this *Kirkland Alert*, please contact the following Kirkland author or your regular Kirkland contact.

Christine Strumpfen-Darrie  
Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022  
[www.kirkland.com/cstrumpendarrie](http://www.kirkland.com/cstrumpendarrie)  
+1 212 446 4853

*This communication is distributed with the understanding that the author, publisher and distributor of this communication are not rendering legal, accounting, or other professional advice or opinions on specific facts or matters and, accordingly, assume no liability whatsoever in connection with its use. Pursuant to applicable rules of professional conduct, this communication may constitute Attorney Advertising.*