

LEGAL UPDATES

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NYSE Publishes 2024 Listed Company Compliance Guidance Memo

On January 31, 2024, the New York Stock Exchange (NYSE) published its 2024 Listed Company Compliance Guidance Memo. The NYSE Memo contains general guidance with important reminders for all NYSE listed companies, along with a discussion of the following new matters for 2024:

Recovery of erroneously awarded compensation

On October 2, 2023, the NYSE amended the NYSE Listed Company Manual (LCM) to add Sections 3.03A.14 and 802.01F, requiring listed companies to have in place policies and procedures for recovery of erroneously awarded compensation (a Clawback Policy), subject to limited exceptions. Issuers were required to comply by December 1, 2023, and confirm compliance (or an exception) via Listing Manager no later than December 31, 2023. The NYSE Memo notes that the Securities and Exchange Commission (SEC) did not provide such an exemption for issuers whose only listed securities are debt securities, and the NYSE Memo confirms that all debt-only issuers listed on the NYSE are required to adopt a Clawback Policy, including, without limitation, those with guarantees from listed parents and those that are exempt from disclosure requirements pursuant to Securities Exchange Act of 1934 Rule 12h-5.

Sale of securities to passive shareholders

The NYSE recently approved amendments to Sections 312.03(b) and 312.04 of the LCM, expanding the circumstances under which listed companies can sell securities without shareholder approval to large passive shareholders. Prior to the amendment, Section 312.03(b)(i) of the LCM provided that shareholder approval was required prior to the issuance of common stock, or of securities

convertible into or exercisable for common stock, in any transaction or series of related transactions, to a director, officer, or substantial security holder of the company if the number of shares of common stock to be issued, or if the number of shares of common stock into which the securities might be convertible or exercisable, exceeded either one percent of the number of shares of common stock or one percent of the voting power outstanding before the issuance. As amended, Section 312.03(b)(i) of the LCM is now limited in its application to sales to a director, officer, controlling shareholder or member of a control group (as disclosed on a Schedule 13D or 13G filing) or any other substantial security holder of the company that has an affiliated person who is an officer or director of the company (each an Active Related Party) and is no longer applicable to passive shareholders that do not meet the definition of an Active Related Party.

Shortened settlement cycle (T+1)

On February 15, 2023, the SEC adopted amendments to Rule 15c6-1(a)¹ to shorten the standard settlement cycle from two business days after the trade date (T+2) to one business day after the trade date (T+1). The transition to a T+1 settlement cycle will occur on May 28, 2024, and the NYSE will propose to adopt new rules to reflect “regular way” settlement as occurring on T+1. The shortened settlement cycle will also result in a change in the NYSE’s rules with respect to ex-dividend and ex-rights trading, from commencing one trading day before the record date for a dividend or other distribution, to commencement of ex-dividend trading or ex-rights trading on the record date. To avoid confusion during the transition, no securities will become ex-dividend on May 28, 2024 (securities paying a dividend with a record date of May 28 will be traded ex-dividend on May 24, and securities paying a dividend with a record date of May 29 will be traded ex-dividend on May 29).

Listed issuers should, to the extent practicable, avoid consummation of corporate actions during the time of transition from T+2 to T+1

The NYSE Memo reminds issuers to avoid consummation of corporate actions during the transition period from T+2 to T+1.

Contact us

Husch Blackwell’s Securities & Corporate Governance team will continue to monitor these changes and their implications. Should you have any questions, please do not hesitate to contact Craig Adoor, Steve Barrett, Robert Joseph, Victoria Sitz, Andrew Spector, or your Husch Blackwell attorney.