

Majority Voting - Proposed Listing Standards for the New York Stock Exchange

305.00 Majority Voting Standard; Director Resignation Policy

(a) Unless the charter of the listed company requires a greater number of affirmative votes, in any uncontested election of directors at a meeting at which a quorum is present, each director of a listed company will be elected only if such director receives the affirmative vote of a majority of the votes cast ("majority voting standard").

(i) The majority voting standard shall not apply in the event of a contested election.

(ii) Uncontested Elections. An "uncontested" election of directors refers to an election of directors that is not "contested." An election is "contested" if there are more nominees for director than available seats on the board. In the event of a contested election, directors will be elected by a plurality of the votes cast by the shares entitled to vote.

Note: If fewer than the minimum number of directors, as defined in the listed company's charter or by-laws, is thereby elected, the listed company may fill such vacancies according to the provisions of its charter or by-laws. A reasonable transition period may be appropriate under certain circumstances.

Commentary: A majority voting standard for the election of directors is important not only to provide shareholders with more meaningful voting power but also to make boards more accountable to their shareholders.

(b) Any incumbent director who fails to receive a majority of votes cast in any uncontested election of directors will tender his or her resignation, promptly following the certification of election results.

Note: The Board may not reject a director's offer to resign under the director resignation policy unless the Board determines that such director's continuing service on the board is necessary or required to (i) maintain compliance with securities regulations, (ii) avoid violation of a contractual provision, or (iii) avoid violation of state law or of a provision of the company's governing documents.

Equity Listings

Section 305 applies to all companies listing common equity securities, with the following exceptions:

Controlled Companies

A listed company of which more than 50% of the voting power for the election of directors is held by an individual, a group or another company is not required to comply with the requirements of Section 305.

Limited Partnerships and Companies in Bankruptcy

Due to their unique attributes, limited partnerships and companies in bankruptcy proceedings are not required to comply with the requirements of Section 305.

Closed-End and Open-End Funds

Given the pervasive federal regulation applicable to them, closed-end and open-end management investment companies that are registered under the Investment Company Act of 1940 are not required to comply with the requirements of Section 305.

Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that act, are required to comply with Section 305.

Other Entities

Section 305 does not apply to passive business organizations in the form of trusts (such as royalty trusts) or to derivatives and special purpose securities (such as those described in Sections 703.19 and 703.20).

Foreign Private Issuers

Listed companies that are foreign private issuers (as such term is defined in Rule 3b-4 under the Exchange Act) are permitted to follow home country practice in lieu of the provisions of this Section 305.

Compliance Dates

Companies currently listed on the NYSE shall have one year from the effective date of Section 305 to comply with all applicable requirements of Section 305.

Companies that list upon emergence from bankruptcy and companies that cease to qualify as a controlled company shall have one year from their listing date or the date of their status change, respectively. A listed company that ceases to qualify as a foreign private issuer shall have one year from the date on which it fails to qualify for foreign private issuer status pursuant to SEC Rule 240.3b-4.

Preferred and Debt Listings

Section 305 does not generally apply to companies listing only preferred or debt securities on the Exchange.

303A.09

Listed companies must adopt and disclose corporate governance guidelines.

Commentary: No single set of guidelines would be appropriate for every listed company, but certain key areas of universal importance include director qualifications and responsibilities, responsibilities of key board committees, and director compensation.

The following subjects must be addressed in the corporate governance guidelines:

- Director qualification standards. These standards should, at minimum, reflect the independence requirements set forth in Sections 303A.01 and 303A.02. Companies may also address other substantive qualification requirements, including policies limiting the number of boards on which a director may sit, and director tenure, retirement and succession.
- Director responsibilities. These responsibilities should clearly articulate what is expected from a director, including basic duties and responsibilities with respect to attendance at board meetings and advance review of meeting materials.
- Director access to management and, as necessary and appropriate, independent advisors.
- Director compensation. Director compensation guidelines should include general principles for determining the form and amount of director compensation (and for reviewing those principles, as appropriate). The board should be aware that questions as to directors' independence may be raised when directors' fees and emoluments exceed what is customary. Similar concerns may be raised when the listed company makes substantial charitable contributions to organizations in which a director is affiliated, or enters into consulting contracts with (or provides other indirect forms of compensation to) a director. The board should critically evaluate each of these matters when determining the form and amount of director compensation, and the independence of a director.
- Director orientation and continuing education.
- Management succession. Succession planning should include policies and principles for CEO selection and performance review, as well as policies regarding succession in the event of an emergency or the retirement of the CEO.
- Annual performance evaluation of the board. The board should conduct a self-evaluation at least annually to determine whether it and its committees are functioning effectively.
- **Majority voting standard and resignation policy for the election of directors. This should include, at a minimum, the requirements set forth in Section 305.00.**

Website Posting Requirement: A listed company must make its corporate governance guidelines available on or through its website.

Disclosure Requirements: A listed company must disclose in its annual proxy statement or, if it does not file an annual proxy statement, in its annual report on Form 10-K filed with the SEC that its corporate governance guidelines are available on or through its website and provide the website address.