Public Company Advisory Group

Comparison of Corporate Governance Principles & Guidelines:

United States

November 2013

COMPARISON OF CORPORATE GOVERNANCE PRINCIPLES & GUIDELINES: UNITED STATES

The attached analysis compares suggestions for board structure and practice by influential members of the corporate, institutional investor and legal communities, and is organized in accordance with the Key Agreed Principles to Strengthen Corporate Governance for U.S. Publicly Traded Companies ("Key Agreed Principles") published by the National Association of Corporate Directors ("NACD") in 2008 with input from the business and investor communities. Footnotes and the appendix reference relevant provisions of the Dodd-Frank Act of 2010, the Sarbanes-Oxley Act of 2002, New York Stock Exchange ("NYSE") and Nasdaq Listing Rules, the 2011 ABA Corporate Director's Guidebook, survey data on actual board practices compiled by the NACD and Spencer Stuart, and other information.

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Weil attorneys have advised the World Bank, the Organisation for Economic Co-operation and Development ("OECD"), the European Commission and various stock exchanges and regulatory bodies on governance reform efforts and have been leaders in providing director training programs worldwide. In addition, the Firm has played a leading role in the development of some of the world's most influential corporate governance recommendations and guidelines, including: National Association of Corporate Directors ("NACD"), REPORT OF THE NACD BLUE RIBBON COMMISSION ON DIRECTOR PROFESSIONALISM (1996, reissued 2001, 2005 and 2011); General Motors Board of Directors, CORPORATE GOVERNANCE GUIDELINES (1994, revised 2011); OECD PRINCIPLES OF CORPORATE GOVERNANCE (1999, revised 2004); European Association of Securities Dealers, CORPORATE GOVERNANCE PRINCIPLES AND RECOMMENDATIONS (2000); International Corporate Governance Network, STATEMENT ON GLOBAL CORPORATE GOVERNANCE PRINCIPLES (1999, revised 2009); REPORT OF THE BLUE RIBBON COMMITTEE ON IMPROVING THE EFFECTIVENESS OF CORPORATE AUDIT COMMITTEES (for the New York Stock Exchange and National Association of Securities Dealers) (1999); REPORT OF THE OECD BUSINESS SECTOR ADVISORY GROUP ON CORPORATE GOVERNANCE (1998), and NACD, KEY AGREED PRINCIPLES TO STRENGTHEN CORPORATE GOVERNANCE FOR U.S. PUBLICLY TRADED COMPANIES (2008). The Firm also completed a study of guidelines and codes for the European Commission entitled: COMPARATIVE STUDY OF CORPORATE GOVERNANCE CODES RELEVANT TO THE EUROPEAN UNION AND ITS MEMBER STATES (2002).

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"'Corporate governance' refers to that blend of law, regulation, and appropriate voluntary private-sector practices which enables the corporation to attract financial and human capital, perform efficiently, and thereby perpetuate itself by generating long-term economic value for its shareholders, while respecting the interests of stakeholders and society as a whole. The principal characteristics of effective corporate governance are: transparency (disclosure of relevant financial and operational information and internal processes of management oversight and control); protection and enforceability of the rights and prerogatives of all shareholders; and directors capable of independently approving the corporation's strategy and major business plans and decisions, and of independently hiring management, monitoring management's performance and integrity, and replacing management when necessary."

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and noted authority on corporate governance

COMPARISON OF CORPORATE GOVERNANCE PRINCIPLES & GUIDELINES: UNITED STATES

TABLE OF CONTENTS*

* In the tables that follow, *italic typeface* is used to indicate our comments. All other typeface represents the quoted text of the Guidelines and Codes cited. ** Under NYSE listing rules, domestic listed companies are required to adopt and disclose corporate governance guidelines addressing: director responsibilities; director qualification standards; director orientation and continuing education; director compensation; annual board performance evaluation; director access to management; management succession; and board access, as necessary and appropriate, to independent advisors. The double asterisk next to a heading indicates a topic that must be addressed in a domestic NYSE-listed company's guidelines.

OVERVIEW				
ALI Principles/Recommendations[1]	BRT Principles[2]	NACD Report[3]	Conference Board Recommendations[4]	OECD Principles[5]/Millstein Report[6]
The American Law Institute ("ALI") adopted its "Principles of Corporate Governance: Analysis and Recommendations" in May 1992 (published 1994 and regularly updated through issuance of supplements). *The ALI Principles and Recommendations are based on analysis of laws relating to the governance of corporations. While they are, in large part, a restatement of widely accepted legal principles, they also touch on governance best practice, especially in Vol. 1, Part III-A, "Recommendations of Corporate Practice Concerning the Board and the Principal Oversight Committees."*	*Business Roundtable ("BRT") is an association of CEOs of leading U.S. corporations with a combined workforce of more than 14 million employees and over US$ 6 trillion in revenues. It issued "Principles of Corporate Governance" in May 2002, and most recently revised them in June 2012.* *The BRT Principles are an update of the "Statement on Corporate Governance" (September 1997), which updated "Corporate Governance and American Competitiveness" (March 1990), which in turn updated "The Role and Composition of the Board of Directors of the Large Publicly-Owned Corporation" (January 1978).* *Other BRT publications addressing corporate governance matters include "Executive Compensation Principles and Commentary" (January 2007, November 2003), "Guidelines on Shareholder-Director Communications" (May 2005), "The Nominating Process and Corporate Governance Committees: Principles and Commentary" (April 2004), "Executive Compensation/Share Ownership" (March 1992) and "Statement on Corporate Responsibility" (October 1981).*	*The Report of the National Association of Corporate Directors ("NACD") Commission on Director Professionalism, chaired by Ira M. Millstein, discusses governance practices designed to promote a culture of "professionalism" for boards and board members. The NACD Report (1996, reissued unchanged in 2001, 2005, and 2011) is intended to be forward-looking and aspirational. It recognizes that board practices are evolving and will continue to evolve.* The report grants the premise that each corporation has its unique history and perspectives, and its own future to plan. Fixed, rigid rules of board governance are not, therefore, in order. The report suggests that qualified directors collectively make their own rules for the governance of their respective boards, and it strongly urges that they do so after thoughtful and rigorous deliberation . . . In no sense is this a "one-size-fits-all" approach; rather, it is a sophisticated "do-it-yourself" process for board members seeking a culture of boardroom professionalism. (Foreword to the Original Edition by Ira M. Millstein, pp. ix-x)	*The Conference Board Commission on Public Trust and Private Enterprise issued "Findings and Recommendations, Part 1: Executive Compensation" (September 2002), and "Part 2: Corporate Governance/ Part 3: Audit and Accounting" (January 2003).* *The Conference Board formed a 12-member Commission on Public Trust and Private Enterprise in 2002 to address corporate scandals and the perception of declining public trust in U.S. companies, their leaders and the capital markets. Commission members represented institutional investors, private corporations, government and the legal community.* *These recommendations are supplemented by Corporate Governance Handbook: Legal Standards and Board Practices (2009).*	*In April 1998, the Business Sector Advisory Group on Corporate Governance, chaired by Ira M. Millstein, issued a report to the Organisation for Economic Co-operation and Development ("OECD") entitled "Corporate Governance: Improving Competitiveness and Access to Capital in Global Markets" (the "Millstein Report"). It addresses the elements of a corporate governance framework relevant to the promotion of access to capital. The OECD built upon this report through its "Principles of Corporate Governance" (1999, revised 2004), ratified by OECD Ministers.* *The OECD Principles address:* *I. Ensuring the Basis for an Effective Corporate Governance Framework;* *II. The Rights of Shareholders and Key Ownership Functions; III. Equitable Treatment of Shareholders;* *IV. The Role of Stakeholders in Corporate Governance;* *V. Disclosure and Transparency; and* *VI. Responsibilities of the Board. They are intended to serve as nonbinding reference points for local governments and private sectors to adapt and build upon. They are grounded on two propositions underpinning the Millstein Report: 1) no one country or existing system of corporate governance can serve as the model that dictates reform worldwide; and 2) access to capital is the primary driver for the integration of core corporate governance practices in the international arena.*

[1] The American Law Institute ("ALI"), Principles of Corporate Governance: Analysis and Recommendations, Vol. 1 (1994, with supplements).
[2] Business Roundtable, Principles of Corporate Governance (May 2002, most recently revised June 2012).
[3] National Association of Corporate Directors ("NACD"), Report of the NACD Blue Ribbon Commission on Director Professionalism (November 1996, reissued 2001, 2005, and 2011).
[4] The Conference Board Commission on Public Trust and Private Enterprise, Findings and Recommendations, Part 1: Executive Compensation (September 17, 2002); Findings and Recommendations, Part 2: Corporate Governance and Part 3: Audit and Accounting (January 9, 2003). *See also*
The Conference Board, Corporate Governance Handbook: Legal Standards and Board Practices (2009).
[5] Organisation for Economic Co-operation and Development ("OECD"), Principles of Corporate Governance (April 1999, revised April 2004).
[6] Business Sector Advisory Group on Corporate Governance, chaired by Ira M. Millstein, Corporate Governance: Improving Competitiveness and Access to Capital in Global Markets: A Report to the OECD (the "Millstein Report") (April 1998).

OVERVIEW				
CalPERS Principles[7]	CII Policies[8]	TIAA-CREF Policy Statement[9]	AFL-CIO Voting Guidelines[10]	ISS [11]
The California Public Employees' Retirement System ("CalPERS") is the largest U.S. public pension fund, with assets totaling $225 billion spanning domestic and international markets as of January 6, 2012. The Global Principles of Accountable Corporate Governance ("Principles") create the framework by which CalPERS executes its proxy voting responsibilities. In addition, the Principles provide a foundation for supporting the System's corporate engagement and governance initiatives to achieve long-term sustainable risk adjusted investment returns . . . CalPERS Global Principles are broken down into four areas – Core, Domestic, International, and Emerging Markets Principles. Adopting the Principles in its entirety may not be appropriate for every company in the global capital marketplace due to differing developmental stages, competitive environment, regulatory or legal constraints. However, CalPERS does believe the criteria contained in the Core Principles can be adopted by companies across all markets - from developed to emerging – in order to establish the foundation for achieving long-term sustainable investment returns through accountable corporate governance structures. For companies in the United States or listed on U.S. stock exchanges, CalPERS advocates the expansion of the Core Principles into the Domestic Principles of Accountable Corporate Governance. (II)	*The Council of Institutional Investors ("CII") is a nonprofit association of pension funds and other employee benefit funds, foundations and endowments with combined assets that exceed $3 trillion.* Council policies are designed to provide guidelines that the Council has found to be appropriate in most situations. They bind neither members nor corporations. (§ 1.1)	*Teachers Insurance and Annuity Association – College Retirement Equities Fund ("TIAA-CREF"), a private pension fund, is the largest U.S. pension fund, public or private, with assets of more than US$450 billion under management. TIAA-CREF encourages companies in which it invests to observe its corporate governance policies, as set forth in its "Policy Statement on Corporate Governance" (1997, most recently revised March 2011 – 6th Edition).* [This edition reflects] current developments in corporate governance, social and environmental policies, the convergence of best practices across global markets, and enhanced shareholder rights and responsibilities recently granted by the U.S. Securities and Exchange Commission, Congress, and other foreign governments and regulators. [TIAA-CREF] policies continue to respect the province of boards and management to run the company while safeguarding [the] rights [of] shareholders. (p. 3).	*The American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO") represents more than 11 million unionized workers.* The AFL-CIO Proxy Voting Guidelines . . . have been developed to serve as a guide for Taft-Hartley and union-sponsored plan trustees in meeting their fiduciary duties as outlined in the Employee Retirement Income Security Act of 1974 (ERISA) and subsequent Department of Labor (DOL) policy statements. . . . In addition, the Guidelines have been created to aid public employee plan trustees in the review and development of guidelines for their funds. (Introduction)	*Institutional Shareholder Services Inc. ("ISS") is a provider of proxy voting advisory and corporate governance rating services. The ISS "2013 U.S. Proxy Voting Summary Guidelines" (effective for meetings on or after February 1, 2013) sets forth its proxy voting recommendations and is used to analyze proposals on the proxy ballots of U.S. corporations. The ISS "2014 Updates" (effective for meetings on or after February 1, 2014) update the 2013 guidelines. In December 2013, ISS will release a complete set of updated policies for 2014.* *ISS Governance QuickScore is ISS' corporate governance ratings product. Its methodology applies a "quantitatively-driven" approach that assigns "governance factor weights" based on the degree of correlation that ISS finds between 79 corporate governance attributes (for US companies) and 16 performance and risk factors (grouped under market, profitability, risk, and valuation categories). The higher the correlation according to ISS' algorithm, the higher the weights allocated for each of the governance factors. QuickScore will also apply a secondary policy-based overlay to align the qualitative aspect of governance with ISS policy.*

[7] California Public Employees' Retirement System ("CalPERS"), Corporate Governance Principles and Guidelines – United States (April 1998), most recently revised and renamed, Global Principles of Accountable Corporate Governance (November 2011).
[8] Council of Institutional Investors ("CII"), Corporate Governance Policies (March 1998, most recently revised April 2013).
[9] Teachers Insurance and Annuity Association–College Retirement Equities Fund ("TIAA-CREF"), TIAA-CREF Policy Statement on Corporate Governance (October 1997, most recently revised January 2012).
[10] American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"), AFL-CIO Proxy Voting Guidelines – Exercising Authority, Restoring Accountability (1997, most recently revised 2012).
[11] ISS, 2013 U.S. Proxy Voting Summary Guidelines (December 2012); ISS, 2014 Updates (November 2013); ISS, ISS Governance QuickScore: Overview (January 2013).

KEY AGREED PRINCIPLES[12]

I. BOARD RESPONSIBILITY FOR GOVERNANCE

Governance structures and practices should be designed by the board to position the board to fulfill its duties effectively and efficiently.

The board of directors, as the central mechanism for oversight and accountability in our corporate governance system, is charged with the direction of the corporation, including responsibility for deciding how the board itself should be organized, how it should function, and how it should order its priorities. The board's fiduciary objective is long-term value creation for the corporation; governance form and process should follow.

Shareholders and management have important viewpoints about governance structures and processes, and shareholders elect directors and have authority for certain critical decisions. However, it is the board that is charged with selecting and evaluating senior executives; planning for succession; monitoring performance; overseeing strategy and risk; compensating executives; approving corporate policies and plans; approving material capital expenditures and transactions not in the ordinary course of business; ensuring the transparency and integrity of financial disclosures and controls; providing oversight of compliance with applicable laws and regulations; and setting the "tone at the top." Ultimately, therefore, the board must decide how best to position itself to fulfill its fiduciary obligations.

The corporation today faces pressures and scrutiny from a variety of stakeholders (for example, employees, customers, suppliers, special interest groups, communities, politicians, and regulators) having diverse interests in its operation and success. Moreover, shareholders are increasingly diverse and the capital markets and the business and social environment are increasingly complex and challenging. In addition to individuals who hold shares directly, investors now include a growing variety of entities that invest monies on behalf of their beneficiaries and have diverse time horizons, strategies, and interests in the corporation. These include hedge funds, private equity and venture capital funds, public and private pension funds, mutual funds, sovereign wealth funds, insurance companies, banks and other types of lenders, and derivative product holders. In responding to the pressures facing the corporation, the board must understand the diverse interests of stakeholders and investors, and consider competing demands and pressures as necessary and appropriate while ensuring that the corporation is positioned to create the long-term value that all shareholders have an interest in as a unified body.

This is the context in which the board must order its governance structures and processes, providing both oversight and guidance to management regarding strategic planning, risk assessment and management, and corporate performance. Serving as a director is demanding and—in addition to significant substantive knowledge and experience relevant to the business and governance needs of the company—requires integrity, objectivity, judgment, diplomacy, and courage.

[12] Key Agreed Principles to Strengthen Corporate Governance for U.S. Publicly Traded Companies (National Association of Corporate Directors, 2008) (hereinafter "Key Agreed Principles"), available at http://www.nacdonline.org/files/NACDKeyAgreedPrinciples_1283432229581.pdf.

I.A. The Corporate Objective & Mission of the Board of Directors[13]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
[A] corporation should have as its objective the conduct of business activities with a view to enhancing corporate profit and shareholder gain. (§ 2.01(a)) *See* § 3.01, Comment a (It is generally recognized that the board of directors is not expected to operate the business. Even under statutes providing that the business and affairs shall be "managed" by the board of directors, it is recognized that actual operation is a function of management. The responsibility of the board is limited to overseeing such operation. . . .). *See* Topic Heading I.B, *below*.	[T]he paramount duty of the board of directors of a public corporation is to select a chief executive officer and to oversee the CEO and senior management in the competent and ethical operation of the corporation on a day-to-day basis. (p. 2) The board of directors has the important role of overseeing management performance on behalf of shareholders. Its primary duties are to select and oversee a well-qualified and ethical chief executive officer who, with other management, runs the corporation on a daily basis, and to monitor management's performance and adherence to corporate and ethical standards. Effective corporate directors are diligent monitors, but not managers, of business operations. (p. 5) The business of a corporation is managed under the oversight of the corporation's board. The board delegates to the CEO – and through the CEO to other senior management – the authority and responsibility for managing the everyday affairs of the corporation. Directors monitor management on behalf of the corporation's shareholders. (p. 7) *See* Topic Heading I.B, *below*.	The objective of the corporation (and therefore of its management and board of directors) is to conduct its business activities so as to enhance corporate profit and shareholder gain. In pursuing this corporate objective, the board's role is to assume accountability for the success of the enterprise by taking responsibility for the management, in both failure and success. This means selecting a successful corporate management team, overseeing corporate strategy and performance, and acting as a resource for management in matters of planning and policy. (p. 1) Among the most important missions of the board is ensuring that shareholder value is both enhanced through corporate performance and protected through adequate internal financial controls. (p. 8) *See* Topic Heading I.B, *below*. *See also* REPORT OF THE NACD BLUE RIBBON COMMISSION ON BOARD LEADERSHIP (2004).	Each board of directors should establish a structure . . . that provides an appropriate balance between the powers of the CEO and those of the independent directors, enables it to carry out its oversight function, and gives the independent directors, in particular, the powers they require to perform their oversight roles. (Part 2, Principle I) *See* Topic Heading I.B, *below*.	The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders. A. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders. B. Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly. C. The board should apply high ethical standards. It should take into account the interests of stakeholders. (Principle VI) *See* Principle I (The corporate governance framework should promote transparent and efficient markets, be consistent with the rule of law and clearly articulate the division of responsibilities among different supervisory, regulatory and enforcement authorities.). *See* Millstein Report, Perspective 21 ([C]orporations should disclose the extent to which they pursue projects and policies that diverge from the primary corporate objective of generating long-term economic profit so as to enhance shareholder value in the long term.). *See also* Topic Heading I.B, *below*.

[13] *See* American Bar Association, Corporate Director's Guidebook (6th ed. 2011) (hereinafter "2011 ABA Guidebook") at 11 ("Directors have a responsibility to act in the best interests of the corporation and its shareholders. To do so, they must focus on maximizing the value of the corporation for the benefit of its shareholders."); *id*. at 13 ("[T]he board's principal responsibilities are to select the top management for the corporation, plan for succession, and provide general direction and guidance with respect to the corporation's strategy and management's conduct of the business."); Business Roundtable, Statement on Corporate Governance (September 1997) (hereinafter "1997 BRT Statement") at 1 ("[T]he principal objective of a business enterprise is to generate economic returns to its owners."); Business Roundtable, Statement on Corporate Governance and American Competitiveness (1990) (hereinafter "1990 BRT Statement") at 7 ("The boards of directors of American corporations play a central role in corporate governance. Their principal responsibility is to exercise governance so as to ensure the long-term successful performance of their corporation.").

I.A. The Corporate Objective & Mission of the Board of Directors				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
CalPERS expects companies whose equity securities are held in the Fund's portfolio to conduct themselves with propriety and with a view toward responsible corporate conduct. (III.B.6) Corporate governance practices should focus the board's attention on optimizing the company's operating performance, profitability and returns to shareowners. (III.A.1) Directors should be accountable to shareowners and management accountable to directors. To ensure this accountability, directors must be accessible to shareowner inquiry concerning their key decisions affecting the company's strategic direction. (III.A.2) Corporate directors and management should have a long-term strategic vision that, at its core, emphasizes sustained shareowner value. (III.A.7) The full board is responsible for the oversight function on behalf of shareowners. (III.B.1.9)	*Not covered directly, but see* § 1.4 (Corporate governance structures and practices should protect and enhance a company's accountability to its shareowners, and ensure that they are treated equally. An action should not be taken if its purpose is to reduce accountability to shareowners.). *See also* § 1.7 (Publicly traded companies, private companies and companies in the process of going public should practice good governance. General members of venture capital, buyout and other private equity funds should encourage companies in which they invest to adopt long-term corporate governance provisions that are consistent with the Council's policies.). *See also* Topic Heading I.B, *below*.	The board of directors in their representation of the long-term interest of shareholders is responsible for, among other things: (i) overseeing the development of the corporation's long-term business strategy and monitoring its implementation; (ii) assuring the corporation's financial integrity; (iii) developing compensation and succession planning policies; (iv) setting the ethical tone for the company; and (v) ensuring management accountability. To fulfill these responsibilities, the board must establish good governance policies and practices. Good governance is essential to the board's fulfillment of its duties of care and loyalty. Shareholders in turn are obligated to monitor the board's activities and hold directors accountable for the fulfillment of their duties. (p. 14) *See* Topic Heading I.B, *below*.	Corporate directors have a fiduciary duty to shareholders and the corporation they serve. Shareholders elect corporate directors to hire, monitor, compensate and, if necessary, terminate senior management. (Guideline IV.A) Directors bear ultimate responsibility for the success or failure of the company, and should be held accountable for actions taken that may not be in the company's best long-term interests. (Guideline IV.A.1.3) The primary purpose of the board of directors is to protect shareholders' interests by providing independent oversight of management, including the CEO. (Guideline IV.A.8) *See* Topic Heading I.B, *below*.	<u>Proxy Voting Guidelines</u> *Not covered.* <u>QuickScore</u> *Not covered.*

I.B. Board Job Description / Director Responsibilities[14]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
The board of directors . . . should . . . : (1) Select, regularly evaluate, fix the compensation of, and, where appropriate, replace the principal senior executives; (2) Oversee the conduct of the corporation's business to evaluate whether the business is being properly managed; (3) Review and, where appropriate, approve the corporation's financial objectives and major corporate plans and actions; (4) Review and, where appropriate, approve major changes in . . . the appropriate auditing and accounting principles and practices ...; (5) Perform such other functions as are prescribed by law, or assigned to the board under a standard of the corporation. (§ 3.02(a)) A board of directors . . . has power to: (1) Initiate and adopt corporate plans, commitments, and actions; (2) Initiate and adopt changes in accounting principles and practices; (3) Provide advice and counsel to the principal senior executives; (4) Instruct any committee, principal senior executive, or other officer, and review actions of any committee, principal senior executive, or other officer; (5) Make recommendations to shareholders; (6) Manage the business of the corporation; (7) Act as to all other corporate matters not requiring shareholder approval. (§ 3.02(b)) *See also* Topic Heading I.A, *above*.	The board of directors, the CEO and senior management should set a "tone at the top" that establishes a culture of legal compliance and integrity. (p. 2) Effective directors maintain an attitude of constructive skepticism; they ask incisive, probing questions and require accurate, honest answers; they act with integrity and diligence; and they demonstrate a commitment to the corporation, its business plans and long-term shareholder value. (p. 7) [Board] responsibilities include: • Planning for senior management development and succession. • Reviewing, understanding and monitoring the implementation of the corporation's strategic plans. • Reviewing and understanding the corporation's risk assessment and overseeing the corporation's risk management processes. • Reviewing, understanding and approving annual operating plans and budgets. • Focusing on the integrity and clarity of . . . financial statements and financial reporting. • Advising management on significant issues . . . . • Reviewing and approving significant corporate actions. • Reviewing management's plans for business resiliency. • Nominating directors and committee members and overseeing effective corporate governance. • Overseeing legal and ethical compliance. (pp. 8-10) *See* Topic Heading I.A, *above*.	[E]ach board has the freedom – and, the Commission believes, the obligation – to define its role and duties in detail. (p. 1) [B]oard responsibilities include: • Approving a corporate philosophy and mission. • Selecting, monitoring, evaluating, compensating, and – if necessary – replacing the CEO. . ., and ensuring management succession. • Reviewing and approving management's strategic and business plans . . . . • Reviewing and approving the corporation's financial objectives, plans, and actions . . . . • Reviewing and approving material transactions not in the ordinary course of business. • Monitoring corporate performance against the strategic and business plans . . . . • Ensuring ethical behavior and compliance with laws and regulations, auditing and accounting principles, and the corporation's own governing documents. • Assessing its own effectiveness . . . . • Performing such other functions as are prescribed by law or are assigned to the board in the corporation's governing documents. (pp. 1-2) Boards should periodically review board and CEO role descriptions to accommodate changes in corporate governance and company operations. (p. 4) *See generally* Chapter 2, Processes: How Boards Should Fulfill Their Responsibilities, pp. 3-6. *See also* Topic Heading I.A, *above*.	Among the core responsibilities of the board are: understanding and approving the corporation's long-term, central strategies; understanding the issues, forces, and risks that define and drive the company's business; and overseeing the performance of management. A vigorous and diligent board of directors, a substantial majority of whom are independent, with an appropriate committee structure, is the key to fulfilling the board's responsibilities and to a corporation's effective governance. (Part 2, Principle II) To discharge their responsibilities most effectively, directors should: 1. exercise objectivity and autonomy to make independent, informed decisions; 2. develop the knowledge and expertise to provide effective board oversight; 3. display the character, integrity, and will to assert their points of view, and demonstrate loyalty exclusively to the corporation and its shareowners; 4. devote the time necessary to fulfill the legal, regulatory and stock exchange requirements imposed upon them; and 5. Have the ability to retain . . . advisors and independent staff support. (Part 2, Introduction at 21) *See* Topic Heading I.A, *above*.	The board should fulfill certain key functions, including: 1. Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures. 2. Monitoring the effectiveness of the company's governance practices . . . . 3. Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning. 4. Aligning key executive and board remuneration with the longer term interests of the company and its shareholders. 5. Ensuring a formal and transparent board nomination and election process. 6. Monitoring and managing potential conflicts of interest of management, board members and shareholders . . . . 7. Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place . . . . 8. Overseeing the process of disclosure and communications. (Principle VI.D) The board should be able to exercise objective independent judgment on corporate affairs. (Principle VI.E) *See* Topic Heading I.A, *above*.

[14] Under NYSE listing rules, domestic listed companies are required to adopt and disclose corporate governance guidelines that clearly articulate the responsibilities of directors. There is no comparable requirement for Nasdaq-listed companies. *See* Appendix. *See* 2011 ABA Guidebook at 12 ("In general, state laws provide that all corporate powers shall be exercised by or under the authority of the board of directors of the corporation, and its business and affairs shall be managed by or under the direction of, and subject to the oversight of, the board. . . . State corporate statutes emphasize the board's responsibility to make major decisions on behalf of the corporation and to oversee the management of the corporation.").

I.B. Board Job Description / Director Responsibilities				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Not covered directly, but see Topic Heading I.A, *above*.	Boards should take actions recommended in shareowner proposals that receive a majority of votes cast for and against. . . . Directors should respond to communications from shareowners and should seek shareowner views on important governance, management and performance matters . . . All directors should attend the annual shareowners' meetings and be available, when requested by the chair, to answer shareowner questions . . . . (§ 2.6) The board should implement and disclose a board succession plan. (§ 2.8a) The board should approve and maintain a detailed CEO succession plan. (§ 2.9) The board of directors should monitor, assess and approve all charitable and political contributions . . . made by the company. (§ 2.14a) *See* Topic Heading I.A, *above.*	1. *Monitoring and Oversight*. In fulfilling its duty to monitor the management of the corporate enterprise, the board should: (i) be a model of integrity and inspire a culture of responsible behavior and high ethical standards; (ii) ensure that corporate resources are used only for appropriate business purposes; (iii) mandate strong internal controls, avoid conflicts of interest, promote fiscal accountability and ensure compliance with applicable laws and regulations; (iv) implement procedures to ensure that the board is promptly informed of any violations of corporate standards; (v) through the Audit Committee, engage directly in the selection and oversight of the corporation's external audit firm; and (vi) develop, disclose and enforce a clear and meaningful set of corporate governance principles. 2. *Strategic Business Planning*. The board should participate with management in the development of the company's strategic business plan and should engage in a comprehensive review of strategy with management at least annually. The board should monitor the company's performance and strategic direction, while holding management responsible for implementing the strategic plan. 3. *CEO Selection, Evaluation and Succession Planning*. One of the board's most important responsibilities is the selection, development and evaluation of executive leadership. Strong, stable leadership with proper values is critical to the success of the corporate enterprise. The board should continuously monitor and evaluate the performance of the CEO and senior executives, and should oversee a succession plan for executive management. The board should disclose the succession planning process generally. 4. *Equity Policy*. The board should develop an equity policy that determines the proportion of the company's stock to be made available for compensation and other purposes. The policy should establish clear limits on the number of shares to be used for options and other forms of equity grants. The policy should set forth the goals of equity compensation and their links to performance. (p. 17) *See* Topic Heading I.A, *above.*	*Not covered directly, but see* Guideline IV.A.1.3 (Directors bear ultimate responsibility for the success or failure of the company, and should be held accountable for actions taken that may not be in the company's best long-term interests. Such actions may include awarding excessive compensation to executives or themselves; approving corporate restructurings or downsizings that are not in the company's best long-term interest; adopting anti-takeover provisions without shareholder approval; refusing to provide information to which the shareholders are entitled; or other actions that may not be in the company's long-term best interests. *See also* Guideline IV.A.13 (Shareholders have introduced proposals asking for clarification on the role the board of directors, as representatives of the shareholders, play in developing business. The fiduciary should support proposals asking for such additional disclosure.). *See also* Topic Heading I.A, *above*.	<u>Proxy Voting Guidelines</u> *Not covered.* <u>QuickScore</u> *Not covered.*

KEY AGREED PRINCIPLES

II. CORPORATE GOVERNANCE TRANSPARENCY

Governance structures and practices should be transparent— and transparency is more important than strictly following any particular set of best practice recommendations.

A variety of structures and practices may support and further effective governance. Boards should tailor governance structures and practices to the needs of the company in a pragmatic search for what is most effective and efficient. Governance best practices should be adopted thoughtfully, and not by rote reliance on the recommendations posited by any entity or group. However, every board should strive to understand generally the parameters of and variations in standards of best practice recommended by NACD, Business Round Table, and other thoughtful proponents of effective governance practices….

Every board should explain, in proxy materials and other communications with shareholders, why the governance structures and practices it has developed are best suited to the company. Some boards may choose to disclose their own practices in relation to a set of recognized best practice recommendations, identifying those areas where their practices differ and explaining the board's rationale for such differences. Whether or not a board discloses its practices against a defined set of recommendations, it is the disclosure of governance structures and practices generally and the rationale for divergences from widely accepted best practices that is important. Disclosure of the practices adopted and adapted by the board, along with the rationale for unusual aspects, is far preferable to the adoption of any prescribed set of best practices. Valuing disclosure over rigid adoption of any set of recommended best practices encourages boards to experiment and develop approaches that address their own particular needs, and avoids rigidity. Boards that explain their practices should be rewarded and not penalized for decisions to adapt best practice to their own needs.

II.A. Corporate Governance Guidelines & Related Disclosure[15]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered.	Many boards have adopted standards to assist them in assessing independence. These standards should be included in a corporation's corporate governance principles. (p. 15) The corporate governance committee should develop and recommend to the board a set of corporate governance principles, review them annually, and recommend changes to the board as appropriate. The corporation's corporate governance principles should be available on the corporation's website and should address, at a minimum, board leadership, qualifications for directors, director independence, director responsibilities, the structure and functioning of board committees, board access to management and advisers, director compensation, director orientation and continuing education, board evaluations, and management succession. (p. 22)	In general, boards are permitted, but not required, to appoint committees to assist in the management of their responsibilities. However, publicly traded companies listed on the major U.S. exchanges are required to have an audit committee composed of independent directors. Moreover, certain proxy rules and regulations mandate disclosure of certain committee structures and functions, which may encourage the appointment of board nominating and compensation committees. Many companies have elected to elaborate on these requirements and responsibilities and on methods for the board to fulfill them by developing board guidelines . . . . These corporate elaborations on board responsibilities serve two purposes: first, they show that boards understand their role and the importance of independence; second, they demonstrate that directors have taken steps to exercise their authority in this role. Both of these purposes contribute to a culture of board professionalism, and prospective board members should ask if such guidelines exist when considering joining any board. (p. 2) Boards should establish guidelines for . . . committees . . . . (p. 5) [T]o ensure board independence: [b]oards should define and disclose to shareholders a definition of "independent director." (p. 10) Shareholders' understanding of board and director assessment processes and criteria is indispensable to both board credibility and shareholders' ability to appraise the board's recommended resolutions and proposed slate of directors. Boards should disclose evaluation procedures to shareholders in the proxy statement or other shareholder communication. Board disclosure of procedures is distinct from sharing the substance of such deliberations, which should be confidential. (p. 16)	Boards that choose not to take any of these approaches [for separating Chairman and CEO or designating a Lead/Presiding Director] should explain their reasons for doing so, as well as the board structure which they employ to achieve the objectives of strong, independent board leadership. (Part 2, Principle I, Best Practice 3) Among the practices which boards should consider for establishing an ethical corporate culture are . . . disclosure of practices and processes the company has adopted to promote ethical behavior. (Part 2, Principle VI, Best Practice 3) [T]he nominating/governance committee should recommend to the full board of directors . . . corporate governance principles for adoption by the full board. (Part 2, Principle IV, Best Practice 5) In the event that the board chooses not to implement a proposal that receives a substantial percentage [of shareholder votes], even if less than a majority of the votes cast, it should publicly disclose its reasons for its actions. (Part 2, Principle VII, Best Practice 4) The board should understand the obligations under the [Sarbanes-Oxley] Act that the company must disclose whether or not one or more members of the audit committee qualify as financial experts within the meaning of regulations promulgated pursuant to the Act and, if not, why not. (Part 3, Principle I, Best Practice 3)	Disclosure should include, but not be limited to, material information on: . . . 2. Company objectives. 3. Major share ownership and voting rights. 4. [I]nformation about board members [including] whether they are regarded as independent . . . . 8. Governance structures and policies, in particular, the content of any corporate governance code or policy and the process by which it is implemented. (Principle V.A.8) Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed. (Principle II.D) Particularly for enforcement purposes, and to identify potential conflicts of interest, related party transactions and insider trading, information about record ownership may have to be complemented with information about beneficial ownership. In cases where major shareholdings are held through intermediary structures or arrangements, information about the beneficial owners should therefore be obtainable at least by regulatory and enforcement agencies and/or through the judicial process. (Annotation to Principle V.A.3) [C]orporations should disclose the extent to which they pursue projects and policies that diverge from the primary corporate objective of generating long-term economic profit so as to enhance shareholder value long term. (Millstein Report, Perspective 21)

[15] Under NYSE listing rules, domestic listed companies are required to adopt and disclose corporate governance guidelines. There is no comparable requirement for Nasdaq-listed companies. *See* Appendix. *See* 2011 ABA Guidebook at 104 ("[The nominating and corporate governance] committee typically addresses . . . developing, recommending to the board, and monitoring a statement of corporate governance principles or guidelines…").

II.A. Corporate Governance Guidelines & Related Disclosure				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
The board [should adopt and disclose] a written statement of its own governance principles, and [should re-evaluate] them on at least an annual basis. (III.B.2.1) Shareowner rights – or those structural devices that define the formal relationship between shareowners and the directors to whom they delegate corporate control – should be featured in the governance principles adopted by corporate boards. (III.B.7) The independent chairperson [or lead director should] [a]ssist the board and company officers in assuring compliance with and implementation of the company's Governance Principles. (Appendix C)	[E]very company should have written, disclosed governance procedures and policies . . . The Council posts its corporate governance policies on its Web site (www.cii.org); it hopes corporate boards will meet or exceed these standards and adopt similarly appropriate additional policies to best protect shareowners' interests. (§ 1.3)	[T]he board should: . . . develop, disclose and enforce a clear and meaningful set of corporate governance principles. (p. 17) The Nominating and Governance Committee oversees the company's corporate governance practices and the selection and evaluation of directors. The committee is responsible for establishing board structure and governance policies that conform to regulatory and exchange listing requirements and ensuring the appropriate and effective board oversight of the company's business. When the company's board structure and/or governance policies are not consistent with generally accepted best practices, the committee should ensure that shareholders are provided with a reasonable explanation why the selected structure and policies are appropriate. (pp. 19-20) *See also* p. 18 (Evaluation criteria linked to board and committee responsibilities and goals should be set forth in the charter and governance policies.)	Shareholders have introduced proposals asking for clarification on the role the board of directors, as representatives of the shareholders, play in developing business. The fiduciary should support proposals asking for such additional disclosure. (Guideline IV.A.13)	<u>Proxy Voting Guidelines</u> *Not covered directly, but see* p. 20 *(established governance guidelines are a requirement of a counterbalancing governance structure for purposes of evaluating board leadership proposals).* <u>QuickScore</u> Does the company disclose board/governance guidelines? New York Stock Exchange listed companies are required to publicly disclose board/corporate governance guidelines. Other exchanges, however, do not yet mandate such disclosure. (Question 46)

II.B. Content, Character & Accuracy of Disclosure				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered directly, but see Topic Heading VII.G, *below.*	[I]t is the responsibility of management, under the oversight of the audit committee and the board, to produce financial statements that fairly present the financial condition and results of operations of the corporation and to make the timely disclosures investors need to assess the financial and business soundness and risks of the corporation. (pp. 2-3) The board, assisted by its audit committee, should be satisfied that the financial statements and other disclosures prepared by management accurately present the corporation's financial condition and results of operations to shareholders and that they do so in an understandable manner. (p. 9)	*Not covered directly, but see* Topic Headings II.A, *above, and* II.C *and* VII.G, *below.*	*Not covered directly, but see* Topic Headings II.A, *above, and* II.C *and* VII.G, *below.*	The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company. (Principle V) Disclosure should include, but not be limited to, material information on: 1. The financial and operating results of the company. 2. Company objectives. 3. Major share ownership and voting rights. 4. Remuneration policy for members of the board and key executives, and information about board members, including . . . whether they are regarded as independent by the board. 5. Related party transactions. 6. Foreseeable risk factors. 7. Issues regarding employees and other stakeholders. 8. Governance structures and policies . . . . (Principle V.A) Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial disclosure. (Principle V.B) Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users. (Principle V.E) *See* Millstein Report, Perspectives 9-10 (Regulators should require that corporations disclose accurate, timely information [and] cooperate internationally in developing clear, consistent and comparable standards for disclosure.).

II.B. Content, Character & Accuracy of Disclosure				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Operating, financial, and governance information about companies must be readily transparent to permit accurate market comparisons; this includes disclosure and transparency of objective globally accepted minimum accounting standards, such as …IFRS. (III.A.3) Proxy materials should be written in a manner designed to provide shareowners with the information necessary to make informed voting decisions. (III.A.5) Each capital market in which shares are issued and traded should adopt its own Code of Best Practices to promote transparency of information…. Where such a code is adopted, companies should disclose … whether they are in compliance. (III.A.6) With adequate, accurate and timely data disclosure of environmental, social, and governance practices, shareowners are able to more effectively make investment decisions . . . . (III.B.6) To ensure sustainable long-term returns, companies should provide accurate and timely disclosure of environmental risks and opportunities through adoption of policies or objectives, such as those associated with climate change. (III.B.6.2) Financial reporting plays an integral role in the capital markets by providing transparent and relevant information about the economic performance and condition of businesses. (III.B.4) Companies should [integrate the] representation of operational, financial, environmental, social, and governance performance in terms of both financial and nonfinancial results in order to offer investors a better information set for assessing risk. (III.B.4.1) Auditors should provide independent assurance and attestation to the quality of financial statements to instill confidence in the providers of capital. (III.B.4.3) Auditors should provide a reasonable and balanced assurance on financial reporting matters to investors in narrative reports such as an Auditor's Discussion and Analysis (AD&A) or a Letter to the Shareowners. (III.B.4.6) *See also* Topic Headings II.C, II.D, IV.H and VII.H, *below*.	*Not covered directly, but see* Topic Headings II.A, *above, and* II.C and II.D, *below*.	Shareholders should expect robust disclosure on any item on which they are voting. In order to make informed decisions, shareholders should not be reliant on a third party to gather information from multiple sources. Companies should provide information on director qualifications, independence, affiliations, related party transactions, executive compensation, conflicts of interest and other relevant governance information. Additionally, companies should provide audited financial statements that are acceptable under international governance and accounting standards. (p. 11) Any monetary arrangements between the company and directors outside normal board activities should be approved by the board and disclosed to shareholders. Such monetary arrangements are generally discouraged, as they may compromise a director's independence. (p. 15) *See also* Topic Headings II.A, *above*, *and* II.C *and* VII.G, *below*.	*Not covered directly, but see* Topic Headings II.A, *above, and* II.C, *below*.	<u>Proxy Voting Guidelines</u> *Not covered.* <u>QuickScore</u> Has the company restated financials for any period within the past two fiscal years? Companies may restate their financials due to misrepresentation or accounting irregularities, for example, or, in other cases, due [to] clerical errors in the production of financial statements or business combinations. [QuickScore] will consider the former, focusing on those restatements that pose a material risk to shareholders and/or stakeholders. Restatements can result in significant reputational, legal, and financial risks, as evidenced by the number of U.S. companies that have in recent years been forced to restate their financials as a result of options backdating. (Question 3) Has the company made late financial disclosure filings in the past two fiscal years? Late financial filings could result in penalties for the issuer and adversely impact the company's reputation and shareholder value. (Question 4)

II.C. Disclosure Regarding Compensation[16]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered directly, but see § 5.03 (*duty of fair dealing with respect to director and senior executive compensation*).	The compensation committee should oversee the corporation's disclosures with respect to executive compensation and its shareholder advisory vote on executive compensation. Disclosure about executive compensation should be transparent and written in plain English so that it is understandable to shareholders. In particular, the committee should use the compensation discussion & analysis (CD&A) disclosure to provide shareholders with meaningful and understandable information about the corporation's executive compensation philosophy, policies and practices, the factors that the committee and the board consider in making compensation decisions, and the relationship between executive compensation and corporate performance, and the impact of the corporation's most recent shareholder advisory vote on executive compensation. (p. 24)	Boards should disclose fully in the proxy statement the philosophy and process used to determine director compensation and the value of all elements of compensation. (p. 5)	[C]osts associated with equity-based compensation should be reported on a uniform and consistent basis by all public companies. (Part 1, Principle V) Shareholder and market interests are best served through transparent and readily understandable disclosure of executive compensation and the economic impact of such compensation. Public trust would be enhanced if the Compensation Committee took specific steps and implemented policy to further reassure the public that senior management is not engaged in stock transactions involving the company in advance of material information being available to the public. These policies should be disclosed in filings with the SEC. (Part 1, Principle VII) [A]ny compensation arrangement for a senior executive officer involving any subsidiary, special purpose entity ("SPE") or other affiliate . . . should be permitted only in very special circumstances and only when of benefit to investors. They should be disclosed in filings with the SEC. (Part 1, Principle I, Best Practice 6) *See* Part 1, Principle VII, Best Practice (Executive officers should be required to give advance public notice of their intention to dispose directly or indirectly . . . of the corporation's equity securities.).	Disclosure should include, but not be limited to, material information on . . . [r]emuneration policy for members of the board and key executives . . . . (Principle V.A.4) Information about board and executive remuneration is . . . of concern to shareholders. Of particular interest is the link between remuneration and company performance. Companies are generally expected to disclose information on the remuneration of board members and key executives so that investors can assess the costs and benefits of remuneration plans and the contribution of incentive schemes, such as stock option schemes, to company performance. Disclosure on an individual basis (including termination and retirement provisions) is increasingly regarded as good practice and is now mandated in several countries. In these cases, some jurisdictions call for remuneration of a certain number of the highest paid executives to be disclosed, while in others it is confined to specified positions. (Annotation to Principle V.A.4)

[16] The Dodd-Frank Act requires companies to include new "pay vs. performance" and internal "pay equity" disclosures in certain filings. The SEC has not yet proposed rules implementing these requirements.

II.C. Disclosure Regarding Compensation				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Through its efforts to advocate executive compensation reform, CalPERS emphasizes improved disclosure, the alignment of interests between executive management and shareowners, and enhanced compensation committee accountability for executive compensation. (III.B.3) Executive contracts [should] be fully disclosed, with adequate information to judge the "drivers" of incentive components of compensation packages. (III.B.3.1.d) *Other disclosure requirements relate to:* • *target ranges of total compensation and components* (III.B.3.1.e)*;* • *peer relative analysis* (III.B.3.1.f)*;* • *sustainability objectives* (III.B.3.1.h); • *types of incentive compensation* (III.B.3.2.b); • *previous year's performance metrics* (III.B.3.2.c)*;* • *performance hurdles* (III.B.3.2.e-f)*;* • *equity ownership* (III.B.3.3.a)*;* • *dividend equivalent payout recapture* (III.B.3.3.d); • *board's methodology for approving stock options* (III.B.3.3.f)*;* • *distribution of equity compensation* (III.B.3.3.i)*;* • *equity dilution and run rate* (III.B.3.3.j)*;* • *cost of equity based compensation* (III.B.3.3.m)*;* • *severance agreements* (III.B.3.4)*;* • *"other" forms of compensation* (III.B.3.5)*; and* • *retirement plans* (III.B.3.6).	The compensation philosophy should be clearly disclosed to shareowners in annual proxy statements. (§ 5.5b) The compensation committee should establish performance measures for executive compensation that are . . . publicly disclosed. (§ 5.5d) The compensation committee is responsible for ensuring that all aspects of executive compensation are clearly, comprehensively and promptly disclosed, in plain English, in the annual proxy statement regardless of whether such disclosure is required by current rules and regulations. The compensation committee should disclose all information necessary for shareowners to understand how and how much executives are paid and how such pay fits within the overall pay structure of the company. It should provide annual proxy statement disclosure of the committee's compensation decisions with respect to salary, short-term incentive compensation, long-term incentive compensation and all other aspects of executive compensation, including the relative weights assigned to each component of total compensation . . . [including] full descriptions of the qualitative and quantitative performance measures and benchmarks used to determine compensation . . . . (§ 5.5h) [I]nvestors must have complete and clear disclosure of both the philosophy behind the [director] compensation plan as well as the actual compensation awarded under the plan. (§ 6.1) The annual director compensation disclosure included in the proxy materials should include a discussion of the philosophy for director pay and the processes for setting director pay levels. Reasons for changes in director pay programs should be explained in plain English. Peer group(s) used to compare director pay packages should be fully disclosed, along with differences, if any, from the peer group(s) used for executive pay purposes. (§ 6.2c) The present value of equity awards paid to each director during the previous year and the philosophy and process used in determining director pay should be fully disclosed in the proxy statement. (§ 6.4e)	[T]he board, through its Compensation Committee, along with executive management, is responsible for providing shareholders with a detailed explanation of the company's compensation philosophy, including explanations of all components of the program, through disclosure in the CD&A and the board Compensation Committee Report. (p. 21) A company's compensation disclosure should be based on the following principles: 1. The disclosure should be clear, concise and generally able to be understood by any reasonably informed shareholder. 2. The disclosure should explain how the program seeks to identify and reward the value added by management. 3. The disclosure should identify how compensation is linked to long-term sustainable value creation. 4. Performance metrics, weights and targets should be disclosed, including why they are appropriate given the company's business objectives and how they drive long-term sustainable value. 5. When possible, charts should be used in conjunction with narratives to enhance comprehension. 6. When compensation decisions are inconsistent with generally accepted practices, care should be given to provide shareholders with a reasonable explanation as to why such actions were deemed appropriate. 7. Significant changes to the compensation program from year to year and accompanying rationale should be prominently identified. 8. Companies should explain their rationale for the peer group selected, including reasons for (a) changes to the group from year to year and (b) any differences in the peer group of companies used for strategic and business purposes and the peer group used for compensation decisions. 9. Non-GAAP financial performance measures should be presented alongside their GAAP counterparts with an explanation of why each adjustment was made. 10. Tax gross-ups, if not generally available to all employees, should be accompanied by disclosure explaining why they are reasonable and necessary. 11. If employment contracts are in place for named executive officers, such contracts should be disclosed in detail with an explanation of how such contracts are in the best interest of the company and its shareholders. (pp. 23-24)	The trustees generally believe that shareholders benefit from full disclosure of all forms of compensation received by senior executives. Requiring shareholder approval of important compensation matters also provides an important safeguard against excessive executive pay. The voting fiduciary should support proposals seeking to expand the disclosure of executive compensation or to enhance shareholders' voting rights on compensation matters. The voting fiduciary should also support proposals to enhance the transparency of the executive compensation process. Such proposals may include the adoption of compensation committee charters or supplemental reports on compensation practices. (Guideline IV.C.9)	<u>Proxy Voting Guidelines</u> [Companies should] [p]rovide shareholders with clear, comprehensive compensation disclosures: This principle underscores the importance of informative and timely disclosures that enable shareholders to evaluate executive pay practices fully and fairly. (p. 38) [If the first part of ISS's Pay-for-Performance Evaluation, which considers Peer Group Alignment and Absolute Alignment, demonstrates that a company has] significant unsatisfactory long-term pay-for-performance alignment, or in the case of non-Russell 3000 index companies, misaligned pay and performance are otherwise suggested, [ISS may analyze] . . . any of the following qualitative factors . . . to determine how various pay elements may work to encourage or to undermine long-term value creation and alignment with shareholder interests: . . . [t]he completeness of disclosure and rigor of performance goals . . . (p. 39) Generally, vote FOR shareholder proposals seeking additional disclosure of executive and director pay information, provided the information requested is relevant to shareholders' needs, would not put the company at a competitive disadvantage relative to its industry, and is not unduly burdensome to the company. (p. 51) Generally vote FOR proposals seeking disclosure of the extent to which the company paid non-deductible compensation to senior executives due to Internal Revenue Code Section 162(m), while considering the company's existing disclosure practices. (p. 52) *See also*, pp. 45-46 *relating to option overhang cost*, pp. 48-49 *relating to transfer stock option programs and* pp. 49-50 *relating to equity compensation plans.* <u>QuickScore</u> *See questions in relation to disclosure of performance measures for the short-term incentive plan and the latest active or proposed long-term incentive plan* (Questions 113, 246).

II.D. Disclosure Regarding Charitable and Political Contributions				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered.	Corporations have an important perspective to contribute to the public policy dialogue and should be actively involved in discussions about the development, enactment and revision of the laws and regulations that affect their businesses and the communities in which they operate and their employees reside. To the extent that the corporation engages in political activities, the board should have oversight responsibility and consider whether to adopt a policy on disclosure of these activities. (p. 32)	*Not covered.*	*Not covered.*	*Not covered.*

II.D. Disclosure Regarding Charitable and Political Contributions				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Robust board oversight and disclosure of corporate charitable and political activity is needed to ensure alignment with business strategy and to protect assets on behalf of shareowners. . . . The board should develop and disclose a policy that outlines the board's role in overseeing corporate charitable and political contributions, the terms and conditions under which charitable and political contributions are permissible, and the process for disclosing charitable and political contributions annually. . . . The board of directors should monitor charitable and political contributions (including trade association contributions directed for lobbying purposes) made by the company. The board should ensure that only contributions consistent with and aligned to the interests of the company and its shareowners are approved. . . . The board should disclose on an annual basis the amounts and recipients of monetary and non-monetary contributions made by the company during the prior fiscal year. If any expenditures earmarked or used for political or charitable activities were provided to or through a third-party to influence elections of candidates or ballot measures or governmental action, then those expenditures should be included in the report. (III.B.6.5)	The board of directors should monitor, assess and approve all charitable and political contributions (including trade association contributions) made by the company. The board should only approve contributions that are consistent with the interests of the company and its shareowners. The terms and conditions of such contributions should be clearly defined and approved by the board. The board should develop and disclose publicly its guidelines for approving charitable and political contributions. The board should disclose on an annual basis the amounts and recipients of all monetary and non-monetary contributions made by the company during the prior fiscal year. Any expenditures earmarked for political or charitable activities that were provided to or through a third-party should be included in the report. (§ 2.14)	Without effective oversight, excessive or poorly managed corporate political spending may pose risks to shareholders, including the risk that corporate political spending may benefit political insiders at the expense [of] shareholder interests. Given increased public scrutiny of corporate political activities, we believe it is the responsibility of company boards to review and disclose the use of corporate assets to influence the outcomes of elections. Companies involved in political activities should disclose information about contributions as well as the board and management oversight procedures designed to ensure that political expenditures are made in compliance with all laws and in the best interests of shareholders. Boards should also oversee charitable contributions to ensure that these are consistent with the values and strategy of the corporation. Companies should disclose their corporate charitable contributions, and boards should adopt policies that prohibit corporate contributions that would pose any actual or perceived risk to director independence. (pp. 27-28) TIAA-CREF will generally support reasonable shareholder resolutions seeking disclosure or reports relating to a company's political expenditures, including board oversight procedures, direct political expenditures, and contributions to third parties for the purpose of influencing election results. TIAA-CREF will generally support reasonable shareholder resolutions seeking disclosure or reports relating to a company's charitable contributions and other philanthropic activities. (p. 36)	The voting fiduciary should support proposals that seek disclosure and board level oversight of corporate political contributions and lobbying expenditures. The expenditure of corporate assets for political contributions is expected to grow as a result of the U.S. Supreme Court's 2010 decision in Citizens United v. Federal Election Commission. Absent a system of transparency and accountability, company assets may be used to pursue policy objectives that are inimical to the long-term interests of the company. Publicly available data on corporate political contributions and lobbying expenditures do not provide a complete picture of these activities. Investors need complete disclosure to be able to evaluate the use of corporate assets for political contributions and lobbying expenditures. (Guideline IV.E.8)	<u>Proxy Voting Guidelines</u> Vote AGAINST proposals to publish in newspapers and other media the company's political contributions. Generally vote FOR proposals requesting greater disclosure of a company's political contributions and trade association spending policies and activities. However, the following will be considered: • The company's current disclosure of policies and oversight mechanisms related to its direct political contributions and payments to trade associations or other groups that may be used for political purposes, including information on the types of organizations supported and the business rationale for supporting these organizations; and • Recent significant controversies, fines, or litigation related to the company's political contributions or political activities. Vote AGAINST proposals asking for a list of company executives, directors, consultants, legal counsels, lobbyists, or investment bankers that have prior government service and whether such service had a bearing on the business of the company. Such a list would be burdensome to prepare without providing any meaningful information to shareholders. Vote CASE-BY-CASE on proposals requesting information on a company's lobbying (including direct, indirect and grassroots lobbying), activities, policies and procedures considering: • The company's current disclosure of relevant policies, and management and board oversight; • The company's disclosure regarding trade associations or other groups that it supports, or is a member of, that engage in lobbying activities; • Recent significant controversies, fines, or litigation regarding the company's lobbying-related activities. (2014 Updates, p. 10) <u>QuickScore</u> *Not covered.*

KEY AGREED PRINCIPLES

III. DIRECTOR COMPETENCY & COMMITMENT

Governance structures and practices should be designed to ensure the competency and commitment of directors.

A board's effectiveness depends on the competency and commitment of its individual members, their understanding of the role of a fiduciary and their ability to work together as a group. Obviously, the foundation is an understanding of the fiduciary role and the basic principles that position directors to fulfill their responsibilities of care, loyalty, and good faith.

However, an effective board is far more than the sum of its parts: it should bring together a variety of skill sets, experiences, and viewpoints in an environment conducive to reaching consensus decisions after a full and vigorous discussion from diverse perspectives. While the board should reflect a mix of diverse experiences and skill sets relevant to the business and governance of the company, each board must determine for itself, and review periodically, what those experiences and skill sets are and what the appropriate mix should be as the company faces different challenges over time.

Typically, a board will want some persons with specialized knowledge of relevant businesses and industries and the business environment in which the company functions who can provide insight regarding strategy and risk. Director qualifications and criteria should be designed to position the board to provide oversight of the business.

Directors need to exhibit a commitment of both time and active attention to fulfill their fiduciary obligations. Generally, that means that directors should ensure that they have the time to attend board and committee meetings and the annual meeting of shareholders, prepare for meetings, stay informed about issues that are relevant to the company, consult with management as needed, and address crises should crises arise.

The board may wish to articulate guidelines that encourage directors to limit their other commitments. Such guidelines assist in communicating expectations about the commitment that is expected. Given the considerable variation in individual capacity, boards should apply their judgment and assess directors' commitment through their actions, rather than rely on rigid standards.

III.A. Board Membership Criteria / Director Qualification Standards[17]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
The nominating committee may . . . perform other functions [such as] the recommendation of policies on . . . criteria for membership. . . . Criteria for board membership might include such elements as occupational background and field of skill. (§ 3A.04, Comment e) *See* § 3A.04, Comment e (The nominating committee may [recommend] policies on board composition. . . . Policies on board composition might include such elements as the desired mix of senior executives, persons with a significant relationship to the senior executives, and persons without such a relationship.). *See also* Topic Heading VIII.B, *below*.	Directors bring to the corporation a range of experience and knowledge, but . . . [e]very director should have integrity, character and sound judgment. In addition, a director should represent the interests of all shareholders; directors should not represent the interests of particular constituencies. . . . The composition of the board, as a whole, should reflect a mix of backgrounds, skills and expertise that are appropriate for the corporation given its circumstances and that, collectively, enable the board to perform its oversight function effectively. (p. 7) Having a variety of backgrounds and experience, consistent with the corporation's needs, is important to the overall composition of the board. Because the corporation's need for particular backgrounds and experience may change over time, the board should monitor the mix of skills and experience that directors bring to the board and assess whether the board, as a group, has the necessary tools to work together in a productive and collegial fashion and perform its oversight function effectively. The board should consider implementing a structured framework for this ongoing process, such as using a skills matrix detailing specific qualifications and identifying the skills that current directors, and director candidates, bring to the board. Directors with relevant business and leadership . . . can provide a useful perspective on business strategy and significant risks and an understanding of the challenges facing the business. (p. 13) *See also* Topic Heading VIII.B, *below*.	To be considered for board membership, individual directors should possess all of the following personal characteristics: • Integrity and Accountability . . . . • Informed Judgment . . . . • Financial Literacy . . . . • Mature Confidence. . . . [and] • High Performance Standards. (pp. 7-8) The Commission recommends that the board as a whole should possess all of the following core competencies, with each candidate contributing knowledge, experience, and skills in at least one domain: • Accounting and Finance . . . . • Business Judgment . . . . • Management . . . . • Crisis Response. . . . . • Industry Knowledge . . . . • International Markets . . . . • Leadership. . . . [and] • Strategy/Vision. (pp. 8-9) Boards should seriously consider . . . the distinctive skills, perspectives, and experiences that candidates diverse in gender, ethnic background, geographic origin and professional experience . . . can bring to the boardroom. (p. 13) *See also* Topic Heading VIII.B, *below*.	Basic qualifications for membership on the board should be articulated. The mix of director backgrounds and qualifications should depend, among other things, on the nature of the company, its stage of development, its future strategic vision, and its current business needs. Corporations' businesses vary greatly, and each board should ensure that the mix of its directors' qualifications is tailored to its specific needs. Collectively, the board should have knowledge and expertise in areas such as business, finance, accounting, marketing, public policy, manufacturing and operations, government, technology, and other areas that the board has decided are desirable and helpful to fulfilling its role. Diversity in gender, race, and background of directors, consistent with the board's requirements for knowledge, standards, and experience, are desirable in the mix of the board. (Part 2, Principle III) The Board should articulate in writing the basic qualifications of all directors for membership on the board. (Part 2, Principle III, Best Practice 2) [T]he nominating/governance committee should recommend to the full board of directors . . . qualifications for board membership . . . . (Part 2, Principle IV, Best Practice 1) *See also* Topic Heading VIII.B, *below*.	[B]oards in many companies have established nomination committees . . . to facilitate and coordinate the search for a balanced and qualified board. . . . To further improve the selection process, the Principles also call for disclosure of the experience and background of candidates for the board and the nomination process, which will allow an informed assessment of the abilities and suitability of each candidate. (Annotation to Principle II.C.3) [T]he board has a key role in identifying potential members for the board with the appropriate knowledge, competencies and expertise to complement the existing skills of the board and thereby improve its value-adding potential for the company. (Annotation to Principle VI.D.5) *See* Annotation to Principle II (Shareholders' rights to influence the corporation center on certain fundamental issues, such as . . . the composition of the board.). *See also* Topic Heading VIII.B, *below*.

[17] On December 16, 2009, the SEC amended its rules to require disclosure, for each director and nominee, of the specific experience, qualifications, attributes or skills that led the board to conclude that the person should serve as a director of the company, in light of the company's business and structure, as well as whether and, if so, how the nominating committee considers diversity in identifying nominees for director. If the nominating committee or the board has a policy with regard to the consideration of diversity in identifying director nominees, the new rules require disclosure of how this policy is implemented and how the nominating committee or the board assesses the effectiveness of its policy. Under NYSE listing rules, domestic listed companies are required to adopt and disclose corporate governance guidelines that address qualification standards for directors. There is no comparable requirement for Nasdaq-listed companies. *See* Appendix. *See* 2011 ABA Guidebook at 43 ("[B]oards should identify the personal qualities required of individual directors (such as integrity, candor, capacity for objective judgment) and identify the overall mix of expertise, experience, independence and diversity of backgrounds it seeks . . . The goal is to create a body with the right mix of skill sets, experiences, and diverse viewpoints to contribute to corporate success."); NACD, Report of the NACD Blue Ribbon Commission on Performance Evaluation of Chief Executive Officers, Board and Directors (1994) (hereinafter "1994 NACD Report") at 7-8 (Directors "should be chosen on the basis of . . . talent, expertise, and accomplishment. Diversity of race, gender, age, and nationality . . . may also be taken into account . . . Diversity should not, however, be confused with constituency representation . . . Also, each director should be a shareholder of the corporation."); 1990 BRT Statement at 9, 11-12 ("Effective boards are composed of individuals who are highly experienced in business, investments, large organizations or public affairs, [and] willing and able to commit the time and effort needed to be an effective director.").

III.A. Board Membership Criteria / Director Qualification Standards

CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
The board should facilitate a process that ensures a thorough understanding of the diverse characteristics necessary to effectively oversee management's execution of a long-term business strategy. Board diversity should be thought of in terms of skill sets, gender, age, nationality, race, and historically underrepresented groups. Consideration should go beyond the traditional notion of diversity to include a more broad range of experience, thoughts, perspectives, and competencies to help enable effective board leadership. A robust process for how diversity is considered when assessing board talent and diversity should be adequately disclosed, and entail: … • *Director Attributes*: Board attributes should include a range of skills and experience which provide a diverse and dynamic team to oversee business strategy, risk mitigation and senior management performance. The board should establish and disclose a diverse mix of director attributes, experiences, perspectives and skill sets that are most appropriate for the company. At a minimum, director attributes should include expertise in accounting or finance, international markets, business or management, industry knowledge, governance, customer base experience or perspective, crisis response, risk assessment, leadership and strategic planning. . . . • *Director Nominations*: With each director nomination recommendation, the board should consider the issue of continuing director tenure, as well as board diversity, and take steps as necessary to ensure that the board maintains openness to new ideas and a willingness to reexamine the status quo. (III.B.2.2) • Board members should be required to have a thorough understanding of the characteristics necessary to effectively oversee management's execution of a long-term strategy that optimizes operating performance, profitability, and shareowner value creation. (III.B.2.9) *See also* Topic Heading VIII.B, *below*.	The Council supports a diverse board. The Council believes a diverse board has benefits that can enhance corporate financial performance, particularly in today's global market place. Nominating committee charters, or equivalent, ought to reflect that boards should be diverse, including such considerations as background, experience, age, race, gender, ethnicity, and culture. (§ 2.8b) *See also* Topic Heading VIII.B, *below*.	The board should be composed of individuals who can contribute expertise and judgment, based on their professional qualifications and business experience. The board should reflect a diversity of background and experience. All directors serving on the audit committee should be financially literate and at least one director should qualify as a financial expert. All directors should be prepared to devote substantial time and effort to board duties, taking into account their other professional responsibilities and board memberships. (p. 16) Boards of directors can . . . benefit from a diversity of perspective and demographics. Though we do not believe in quotas, we believe that nominating committees should develop appropriate diversity criteria for director searches to ensure that candidates are drawn from the broadest possible pool of talent. Companies should disclose how diversity policies support corporate efforts to strengthen the effectiveness of their boards. (p. 27) *See* p. 19 (The Nominating and Governance Committee oversees . . . the selection and evaluation of directors.). *See also* Topic Heading VIII.B, *below*.	For directors to effectively discharge [their] responsibilities, they must be highly qualified, diligent in the performance of their duties, committed to high ethical standards, and independent of the company management they oversee. The trustees expect corporate boards to be composed of qualified individuals . . . . (Guideline IV.A) In voting on the entire board of directors, the voting fiduciary should consider the following factors: • Board Independence… • Long-term Performance… • Conduct of the Company… • Responsiveness to Shareholder Concerns… • Views of Other Important Corporate Constituents, Such As Employees and Communities (Guideline IV.A.1.1-1.5) In voting on individual directors, the voting fiduciary should consider the following factors: • Independence of Key Committees… • Performance of Key Committees… • Attendance Records of Incumbent Directors… • Director Service on Other Boards… • Director Performance on Other Boards . . . (Guideline IV.A.1.6-1.10) The voting fiduciary should support proposals requesting companies to make efforts to seek more women and minority group members for service on boards. A more diverse board of qualified directors benefits the company and shareholders. Another example of such diversity would be employee shareholders, and it is reasonable to support proposals that would allow for such representation. (Guideline IV.A.12)	<u>Proxy Voting Guidelines</u> Vote CASE-BY-CASE on proposals that establish or amend director qualifications. Votes should be based on the reasonableness of the criteria and to what degree they may preclude dissident nominees from joining the board. (p. 19) Vote CASE-BY-CASE on shareholder resolutions seeking a director nominee candidate who possesses a particular subject matter expertise, considering: • The company's board committee structure, existing subject matter expertise, and board nomination provisions relative to that of its peers; • The company's existing board and management oversight mechanisms regarding the issue for which board oversight is sought; • The company disclosure and performance relating to the issue for which board oversight is sought and any significant related controversies; and • The scope and structure of the proposal. (p. 19) *See also* Topic Heading VIII.B, *below*. <u>QuickScore</u> *Not covered.*

III.B. Attendance, Commitment & Limits on Other Board Service[18]				
ALI Principles & Recommend.	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered directly, but see Topic Heading VIII.A, *below.*	Serving on a board requires significant time and attention on the part of directors. Directors must participate in board meetings, review relevant materials, serve on board committees, and prepare for meetings and discussions with senior management. Certain roles, such as committee chair, chairman of the board and lead director, carry an additional time commitment . . . Directors must spend the time needed and meet as frequently as necessary to discharge their responsibilities properly. The board . . . should consider the appropriate frequency and length of board meetings. (pp. 24-25) Business Roundtable does not endorse a specific limitation on the number of directorships an individual may hold. However, service on too many boards can interfere with an individual's ability to perform his or her responsibilities, either as a member of senior management or as a director. Before accepting an additional board position, a director should consider whether the acceptance of a new directorship will compromise the ability to devote adequate time and focus to present responsibilities. Directors should notify the chair of the corporate governance committee before accepting a seat on the board of another corporation or assuming a significant new role on an existing board (such as a committee chair or lead director position). (p. 25) Some boards have adopted policies that audit committee members may not serve on the audit committees of more than three public corporations, in accordance with applicable securities market listing standards. Policies may permit exceptions to this limit when the corporation's board determines that the simultaneous service would not affect an individual's ability to serve effectively on the corporation's audit committee. (p. 17)	The commitment to director professionalism carries with it a responsibility for near-perfect attendance at board and committee meetings, including specially called sessions. It also carries the responsibilities to: (1) rigorously prepare prior to a meeting (especially by critically reading all materials provided); (2) give undivided attention at each meeting; and (3) actively participate in meetings through relevant and thought-provoking questions and comments. (p. 10) [T]he board should consider guidelines that limit the number of positions on other boards, subject to individual exceptions – for example, for CEOs and senior executives, one or two; for others fully employed, three or four; and for all others, five or six. (p. 20)	*Not covered directly, but see* Part 2, Introduction at 10 ([D]irectors should . . . display the character, integrity, and will to assert their points of view, and demonstrate loyalty exclusively to the corporation and its shareowners; [and] devote the time necessary to fulfill the legal, regulatory and stock exchange requirements imposed upon them . . . .).	Board members should be able to commit themselves effectively to their responsibilities. (Principle VI.E.3) Service on too many boards can interfere with the performance of board members. Companies may wish to consider whether multiple board memberships by the same person are compatible with effective board performance and disclose the information to shareholders. Some countries have limited the number of board positions that can be held. Specific limitations may be less important than ensuring that members of the board enjoy legitimacy and confidence in the eyes of shareholders. Achieving legitimacy would also be facilitated by the publication of attendance records for individual board members (e.g., whether they have missed a significant number of meetings) and any other work undertaken on behalf of the board and the associated remuneration. (Annotation to Principle VI.E.3) It is important to disclose membership [on] other boards not only because it is an indication of experience and possible time pressures facing a member of the board, but also because it may reveal potential conflicts of interest and makes transparent the degree to which there are interlocking boards. (Annotation to Principle V.A.4)

[18] *See* 2011 ABA Guidebook at 43-44 ("Directors must devote substantial time and attention to their responsibilities, and the time required will vary considerably (depending on the size and complexity of the enterprise and the issues being addressed at a particular time). It is not uncommon for a director's total time commitment to involve 250 hours or more a year, including meeting preparation, travel, meeting attendance, informal consultation with other board members and management, and review of materials to keep up with corporate developments. . . . Certain situations, including change-of-control transactions, financial distress, compliance failures, financial restatements, and management succession crises, also require substantially more time. Directors considering new or continued board service should carefully consider the time required to meet their responsibilities. Directors should not over-commit themselves . . . "); 2013-2014 NACD Public Company Governance Survey (hereinafter "2013 NACD Survey") at 16 (Overall, respondents indicated spending on average 235.9 hours per year on board-related matters.); *id.* at 20 (51.5% of respondents reported having a policy restricting the number of boards a CEO may serve at any one time.); 2013 Spencer Stuart Board Index at 13 (76% of S&P 500 companies restrict the number of outside corporate boards their directors may join. Of the 120 boards that do not have numerical restrictions, 88% ask that directors notify the chairman in advance of accepting an invitation to join another company board and/or they encourage directors to "reasonably limit" their other board service.).).

III.B. Attendance, Commitment & Limits on Other Board Service				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
No director can fulfill his or her potential as an effective board member without a personal dedication of time and energy. (III.B.2) [CalPERs recommends that the] board establishes preparation, participation and performance expectations for itself (acting as a collective body), for the key committees and each of the individual directors. (III.B.2.3) [CalPERs recommends that the] board adopts and discloses guidelines in the company's proxy statement to address competing time commitments that are faced when directors, especially acting CEOs, serve on multiple boards. (III.B.2.4) Directors should be expected to attend at least 75% of the board and key committee meetings on which they sit. (III.B.2.5)	Absent compelling and stated reasons, directors who attend fewer than 75 percent of board and board-committee meetings for two consecutive years should not be renominated. (§ 2.8d) Companies should establish and publish guidelines specifying on how many other boards their directors may serve. Absent unusual, specified circumstances, directors with full-time jobs should not serve on more than two other boards. Currently serving CEOs should not serve as a director of more than one other company, and then only if the CEO's own company is in the top half of its peer group. No other director should serve on more than five for-profit company boards. (§ 2.11)	All directors should be prepared to devote substantial time and effort to board duties, taking into account their other professional responsibilities and board memberships. (p. 16) Prior to nominating directors, the nominating and governance committee should ensure that directors are able to devote the necessary time and energy to fulfill their board responsibilities. Considerations should include, current employment responsibilities, other board and committee commitments and the travel required to attend board meetings in person. (p. 15)	In general, support should be withheld from directors who have failed to attend at least 75 percent of board and committee meetings without adequate justification. The Securities and Exchange Commission requires companies to disclose any incumbent director who attended less than 75 percent of the aggregate of board and applicable committee meetings in the last full fiscal year, and a failure to include information can be assumed to mean that all directors attended 75 percent of the meetings. (Guideline IV.A.1.8) The fiduciary should take into consideration the ability of directors to devote sufficient time and energy to the oversight of the company in question. The voting fiduciary should consider withholding support for director nominees who are employed, or self-employed, on a full-time basis and who serve on boards at three or more other public companies, and for nominees who are retired and who serve on boards at five or more other public companies. Responsibilities known to be equivalent, such as serving on the board of major private or non-profit corporations, should also be taken into account to the extent that this information is disclosed by the company or otherwise made available to the voting fiduciary. (Guideline IV.A.1.9) The voting fiduciary should consider withholding votes from directors where there is sufficient reason to believe that the director's performance on another public company board has been unacceptable. The trustees do not believe that such directors are qualified to represent shareholders on any public company boards unless the individual director is able to provide shareholders with a persuasive explanation of what he or she did to protect shareholders in the particular situation. (Guideline IV.A.1.10)	<u>Proxy Voting Guidelines</u> Generally vote AGAINST or WITHHOLD from directors (except new nominees, who should be considered CASE-BY-CASE) who attend less than 75 percent of the aggregate of their board and committee meetings for the period for which they served, unless an acceptable reason for absences is disclosed in the proxy or another SEC filing. Acceptable reasons for director absences are generally limited to …[m]edical issues/illness; [f]amily emergencies; and [m]issing only one meeting (when the total of all meetings is three or fewer). If the proxy disclosure is unclear and insufficient to determine whether a director attended at least 75 percent of the aggregate of his/her board and committee meetings during his/her period of service, vote AGAINST or WITHHOLD from the director(s) in question. (pp. 13-14) Vote AGAINST or WITHHOLD from individual directors who [s]it on more than six public company boards; or [a]re CEOs of public companies who sit on the boards of more than two public companies besides their own – withhold only at their outside boards. (p. 14) Although all of a CEO's subsidiary boards will be counted as separate boards, ISS will not recommend a withhold vote from the CEO of a parent company board or any of the controlled (>50 percent ownership) subsidiaries of that parent . . . (footnote 6 on p. 14) <u>QuickScore</u> How many boards does the CEO sit on? The Chief Executive role is a position of great responsibility and time demands. Sitting on multiple outside boards may threaten the ability of the CEO to attend to the business of his or her primary employer. (Question 37) Other than the CEO, if on the board, how many directors serve on an excessive number of outside boards? Directors with an excessive number of board seats may not have sufficient time to devote to the needs of individual boards. (Question 38) Did any directors attend less than 75% of the board meetings without a valid excuse? Directors who do not attend a sufficient number of board meetings are not fulfilling their obligation to represent shareholders and provide oversight and direction to management. (Question 45)

III.C. Director Orientation & Continuing Education[19]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered.	Corporations should assist directors who do not have significant background in a corporation's business or industry through orientation programs . . . All directors should remain informed . . . by . . . participating in educational programs. (pp. 13-14) In connection with joining a committee, directors should participate in orientation to familiarize themselves in greater depth with the [committee's] subject matter areas . . . [and] should be encouraged to participate in continuing education relating to the committee's areas of responsibility. (p. 16) Corporations should have a robust orientation process for new directors that is designed to familiarize them with the various aspects of the corporation, including its business, strategy, industry, management, compliance programs and corporate governance practices. Common components of board orientation programs include briefings from senior management, on-site visits to the corporation's facilities, informal meetings with other directors and written materials. Corporations should encourage directors to take advantage of educational opportunities on an ongoing basis. . . . [which] can assist directors in keeping abreast of issues and developments relevant to the corporation and enable them to address specific subjects in greater depth. Continuing education can take the form of participation in outside programs or "in board" educational sessions, led by members of senior management or outside experts and customized . . . . (p. 27)	When first selected, many directors will not have extensive knowledge of the major businesses in which the company is engaged. Directors have an obligation to develop broad, current knowledge of all the company's major businesses, including, specifically, the relevant technology, markets, and economics, as well as the strengths and weaknesses of the company vis-à-vis its major competitors. Being an outstanding director also requires developing broad, current knowledge of all of the company's responsibilities, including the general legal principles applicable to directors' activities in fulfilling those responsibilities. Boards should select candidates who possess or are willing to develop broad, current knowledge of both critical issues affecting the company (including industry-, technology-, and market-specific information), and directorship roles and responsibilities (including the general legal principles that guide board members). (pp. 10-11) *See* p. 10 (A director should maintain leadership in the field of endeavor that attracted the board to select that director. For example, a person chosen for expertise in biotechnology should keep up-to-date in that field. A director who has retired from a CEO position but is invited to remain on the board should stay current with the world of business and the latest management thought and practice. Similarly, other persons who retire from the position they had when selected should remain up-to-date in their fields of expertise.).	[T]he nominating/governance committee should recommend to the full board of directors . . . requirements for, and means of, director orientation and training . . . . (Part 2, Principle IV, Best Practices 3-4) *See* Part 3, Principle II (There should be an orientation program for each member of the audit committee, and members of the audit committee should participate regularly in continuing education programs.).	[A]n increasing number of jurisdictions are now encouraging companies to engage in board training and voluntary self-evaluation that meets the needs of the individual company. This might include that board members acquire appropriate skills upon appointment, and thereafter remain abreast of relevant new laws, regulations, and changing commercial risks through in-house training and external courses. (Annotation to Principle VI.E.3)

[19] Under NYSE listing rules, domestic listed companies' corporate governance guidelines are required to address the matter of orientation and continuing education of directors. There is no comparable requirement for Nasdaq-listed companies. *See* Appendix. *See* 2013 NACD Survey at 19 (95.5% agree or strongly agree that director education enhances board effectiveness. 79.8% of respondents have received continuing director education in the past 12 months.).

III.C. Director Orientation & Continuing Education				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
[E]xisting directors should receive continuing education surrounding a company's activities and operations to ensure they maintain the necessary skill sets and knowledge to meet their fiduciary responsibilities. (III.B.2.2.b)	Directors should receive training from independent sources on their fiduciary responsibilities and liabilities. Directors have an affirmative obligation to become and remain independently familiar with company operations; they should not rely exclusively on information provided to them by the CEO to do their jobs. (§ 2.12a)	Companies should encourage directors to attend education programs offered by the company as well as those offered externally. After an orientation program to acclimate new directors to the company's operations and culture, directors should also receive continued training to increase their knowledge and understanding of the company's businesses and operations. They should enroll in education programs to improve their industry-specific knowledge and understanding of their responsibilities. (pp. 15-16)	*Not covered.*	Proxy Voting Guidelines *Not covered.* QuickScore *Not covered.*

III.D. Board Size[20]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered.	Boards of directors of large publicly owned corporations vary in size from industry to industry and from corporation to corporation. In determining board size, directors should consider the nature, size, and complexity of the corporation as well as its stage of development. The experiences of many Business Roundtable members suggest that smaller boards are more cohesive and work more effectively than larger boards. (p. 13)	Boards should determine the appropriate board size, and periodically assess overall board composition to ensure the most appropriate and effective board membership mix. (p. 4)	*Not covered.*	*Not covered directly, but see* Annotation to Principle VI (Board structures and procedures vary both within and among OECD countries. Some countries have two-tier boards that separate the supervisory function and the management function into different bodies…. Other countries have "unitary" boards, which bring together executive and nonexecutive board members. In some countries there is also an additional statutory body for audit purposes. The Principles are intended to be sufficiently general to apply to whatever board structure is charged with the functions of governing the enterprise and monitoring management.). *See also* Millstein Report, Perspective 15 ([B]oard structure . . . is not a "one-size-fits-all" proposition, and should be left, largely, to individual participants.).

[20] *See* 2011 ABA Guidebook at 42 ("Each board should determine the appropriate size to accommodate the corporation's needs, objectives, and circumstances. Factors that influence board size include the corporation's need for particular types of expertise on the board, the ability to meet applicable independence or other regulatory standards, the need to populate committees with appropriate expertise as required by regulatory or other board-determined standards, and the need for relationships with significant shareholders or other constituencies. Boards should balance these needs with the fact that a board that is too large can impede effectiveness."); 1994 NACD Report at 7 ("Ideally, a board should be small enough to permit thorough discussion of important issues, with enough 'air time' for each view presented, yet large enough to bring a sufficient variety of views and talents to the table."); 2013 NACD Survey at 14-15 (The average board has 8.8 members; in mega-cap companies, boards average 12 members; large-cap company boards average 11.2 members; mid-cap company boards average 9.4 members; small-cap company boards average 8.5 member;, micro-cap company boards average 7.8 members; and nano-cap company boards average 7.3 members.); 2013 Spencer Stuart Board Index at 12 ("On average, S&P 500 boards have 10.7 members today. 43% of boards have 10 or 11 members, compared with 29% a decade ago. By contrast, during the same 10-year period, the percentage of boards with eight or fewer members fell from 20% to 11% and boards with 13 or more members declined from 26% to 16%.").

III.D. Board Size				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
The board periodically reviews its own size, and determines the size that is most effective toward future operations. (III.B.2.6)	Absent compelling, unusual circumstances, a board should have no fewer than five and no more than 15 members (not too small to maintain the needed expertise and independence, and not too large to function efficiently). Shareowners should be allowed to vote on any major change in board size. (§ 2.11)	The board should be large enough to provide expertise and diversity and allow key committees to be staffed with independent directors, but small enough to encourage collegial deliberation with the active participation of all members. (p. 18)	A board that is too large may function inefficiently; a board that is too small may allow the CEO to exert greater force. Proposals allowing the board to set board size may be supported if the board sets a range that it will not exceed. Any proposal for fewer than five directors or more than 15 generally should not be supported. (Guideline IV.A.3)	<u>Proxy Voting Guidelines</u> Vote FOR [management] proposals seeking to fix the board size or designate a range for the board size. Vote AGAINST [management] proposals that give management the ability to alter the size of the board outside of a specified range without shareholder approval. (p. 17) <u>QuickScore</u> *Not covered.*

KEY AGREED PRINCIPLES

IV. BOARD ACCOUNTABILITY & OBJECTIVITY

Governance structures and practices should be designed to ensure the accountability of the board to shareholders and the objectivity of board decisions.

Boards are accountable to shareholders for the governance and performance of the corporation, and must provide active oversight of the management of the corporation. Accountability in the oversight of the corporation is premised on the ability of the board to be objective and distinct from management. While actual board objectivity is key, reassuring shareholders that the board is structured to lessen the likelihood of undue management influence is also important.

Listing standards require that a majority of directors qualify as “independent,” and reserve key functions relating to audit, compensation, and nominating/governance matters to independent directors. (Heightened standards of independence apply to audit committee members.) Listing standards also define certain relationships that are inconsistent with a finding of director independence while otherwise leaving to board discretion the determination whether a director has family, business, consulting, charitable, or other relationships with the company and its management that might undermine objectivity.

Boards are encouraged by listing standards to disclose the standards they apply in determining director independence and must disclose, by category or type, the relationships that they consider in their assessment. Disclosure serves as a significant disciplining force for board independence decisions. Given…the impossibility of defining all the relationships with a company that may arise for directors and director candidates, and the likelihood that many relationships outside the per se prohibited relationships provided by listing rules and SEC regulations will be significantly attenuated, it is advisable that boards retain discretion to decide independence on a case by case basis. Application of board judgment to the independence determination (within the framework provided by listing standard and applicable SEC regulations) is preferable to application of the more rigid standards prescribed in some best practice recommendations.

Executive sessions—usually including both independent directors and those outside directors who do not qualify as independent— without members of management present should be held regularly; more often than once or twice a year. Such sessions provide the opportunity for open discussion of management’s performance and management proposals regarding strategies and actions. Executive sessions are critical in establishing an appropriate environment of objectivity and candor. Most boards also spend time in the board meeting alone with the CEO to provide the CEO with the opportunity for candid exchange outside the presence of executives and staff. In addition, the independent and other outside directors should have the opportunity, from time to time, to meet alone with the chief financial officer, general counsel, and/or other key senior officers outside the presence of the CEO.

Careful respect should be given to maintaining the distinction between the role of the board and the role of management. Undue board involvement in matters of management may interfere with the board’s ability to provide objective oversight of management performance.

IV.A. Independent Board Majority[21]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
It is recommended . . . that: (a) The board of every large publicly held corporation should have a majority of directors who are free of any significant relationship with the corporation's senior executives, unless a majority of the corporation's voting securities are owned by a single person, a family group, or a control group. (b) The board of a publicly held corporation that does not fall within Subsection (a) should have at least three directors who are free of any significant relationship with the corporation's senior executives. (§ 3A.01)	Board independence is critical to effective corporate governance. Providing objective independent judgment is at the core of the board's oversight function, and the board's composition should reflect this principle. Accordingly, a substantial majority of the board's directors should be independent, both in fact and appearance, as determined by the board. (p. 14)	Boards should require that independent directors fill the substantial majority of board seats. Boards should ensure that any director candidate under consideration, with the exception of their own CEO or senior managers, is independent. (p. 9)	A substantial majority of the board should be composed of independent directors. (Part 2, Principle II, Best Practice 1) Boards must be composed of qualified individuals, a substantial majority of whom are free from disqualifying conflicts of interest, who have and will devote the necessary time to fulfill their responsibilities, and who are able to understand the issues facing the company, challenge management with tough questions and goals, and take action when needed. To perform their functions effectively, directors must act diligently and independently of management. (Part 2, Introduction at 9)	The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders. (Principle VI) A number of national principles, and in some cases laws . . . recommend that a majority of the board should be independent. (Annotation to Principle V.A.4) *See* Annotation to Principle VI.E (Board independence . . . usually requires that a sufficient number of board members will need to be independent of management. [However,] [t]he variety of board structures, ownership patterns and practices in different countries . . . require different approaches to the issue of board objectivity. In many instances objectivity requires that . . . independence from controlling shareholders or another controlling body will need to be emphasized.). *See* Millstein Report, Perspective 15 (Policy makers and regulators should encourage some degree of independence in the composition of corporate boards. Stock exchange listing requirements that address a minimal threshold for board independence . . . have proved useful, while not unduly restrictive or burdensome.).

[21] Under NYSE and Nasdaq listing rules, domestic listed companies (subject to certain exemptions for "controlled companies") are required to have a majority of independent directors. *See* Appendix. *See* 1997 BRT Statement at 10 ("It is important for the board of a large, publicly owned corporation to have a substantial degree of independence from management. Accordingly, a substantial majority of the directors of such a corporation should be outside (non-management) directors.").

IV.A. Independent Board Majority				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Independence is the cornerstone of accountability. It is now widely recognized throughout the U.S. that independent boards are essential to a sound governance structure. (III.B.1) At a minimum, a majority of the board consists of directors who are independent. Boards should strive to obtain board composition made up of a substantial majority of independent directors. (III.B.1.1)	At least two-thirds of the directors should be independent; their seat on the board should be their only non-trivial professional, familial or financial connection to the corporation, its chairman, CEO or any other executive officer. (§ 2.3)	The board should be composed of a substantial majority of independent directors. A periodic examination of all relevant information should be conducted to ensure compliance with this policy. TIAA-CREF has long advocated for director independence, which is now widely accepted as the keystone of good corporate governance (p. 15)	The trustees expect corporate boards to be composed of qualified individuals, at least two-thirds of whom are independent . . . . (Guideline IV.A) Effective boards must exercise independent judgment, and this fundamental duty can be compromised by director conflicts of interest. To mitigate these concerns, the trustees believe that at least two-thirds of a corporation's directors should be independent . . . . The voting fiduciary may wish to withhold votes from all non-independent nominees standing for election if 33 percent or more of the directors are non-independent . . . . (Guideline IV.A.1.1) Independence is critical for directors to carry out their duties to select, monitor and compensate management, and the voting fiduciary should generally support efforts to enhance board of director independence. This includes, but is not limited to, proposals to require that at least two-thirds of a company's directors be independent . . . . (Guideline IV.A.10)	<u>Proxy Voting Guidelines</u> Vote AGAINST or WITHHOLD from Inside Directors and Affiliated Outside Directors . . . when . . . [i]ndependent directors make up less than a majority of the directors. (p. 13) Generally vote FOR shareholder proposals requiring that the chairman's position be filled by an independent director, unless the company . . . maintains the following counterbalancing governance structure[, including] two-thirds independent board . . . . (pp. 19-20) Vote FOR shareholder proposals asking that a majority or more of directors be independent unless the board composition already meets the proposed threshold by ISS's definition of independent outsider. (p. 20) <u>QuickScore</u> What is the independent director composition of the Board? The proportion of independent directors on a board is viewed by many as critical to firm performance. (Question 10) What percent of the directors were involved in material RPTs? Related party transactions can lead to conflicts of interest that may compromise independence. (Question 50) What percentage of the board consists of family members? This question…addresses whether members of the board are related (per the SEC definition of family membership) to any executive officers or significant shareholders of the company. (Question 205) What percentage of the board are former or current employees of the company? … This type of affiliation may suggest the ongoing influence of former executives or founders on the board. (Question 206)

IV.B. Definition of "Independence"[22]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
[A] director has a "significant relationship" with the senior executives of a corporation if . . . : (1) The director is employed by the corporation, or was so employed within the two preceding years; (2) The director is a member of the immediate family of an individual who (A) is . . . or (B) was employed by the corporation as a senior executive within the two preceding years; (3) The director has made to or received from the corporation, during either of its two preceding years, commercial payments which exceeded $200,000, or the director owns or has power to vote an equity interest in a business organization to which the corporation made, or from which the corporation received, during either of its two preceding years, commercial payments that . . . exceeded $200,000; (4) The director is a principal manager of a business organization to which the corporation made, or from which the corporation received, during either of the organization's two preceding years, commercial payments that exceeded five percent of the organization's consolidated gross revenues for that year, or $200,000, whichever is more; or (5) The director is affiliated in a professional capacity with a law firm that was the primary legal adviser to the corporation . . . or with an investment banking firm that was retained by the corporation . . . within the two preceding years . . . . (§ 1.34) *See* § 3A.01, Comment d (*significant relationship*) *and* Topic Heading VI.A.	An independent director should not have any relationships with the corporation or its management – whether business, employment, charitable or personal – that may impair, or appear to impair, the director's ability to exercise independent judgment. The listing standards of the major securities markets define "independence" and enumerate specific relationships involving directors and their family members (such as employment with the corporation or its outside auditor) that preclude a director from being considered independent. . . . When evaluating whether a director is independent, the board should consider whether the director has any relationships . . . with the corporation, senior management or other board members that could affect the director's actual or perceived independence. (pp. 14-15) The board's director independence assessment should include a review of relationships that directors, and their spouses, have with not-for-profit organizations that receive support from the corporation. . . . Independence issues are most likely to arise when a director, or the director's spouse, is an employee of the not-for-profit organization and when a substantial portion of the organization's funding comes from the corporation. It also may be appropriate to consider contributions from a corporation's foundation to organizations with which a director or a director's spouse is affiliated. (p. 15)	Relationships that may compromise a director's independence include, but are not limited to: reciprocal directorships (or "director interlocks"); an existing significant consulting or employment relationship; an existing substantial commercial relationship between the director's organization and the board's company; or new business relationships that develop through board membership. (p. 9) *See* p. 10 ([T]o ensure board independence: • Boards should define and disclose to shareholders a definition of "independent director." • Boards should require that director candidates disclose all existing business relationships between them or their employer and the board's company. • Boards should then evaluate the extent to which, if any, a candidate's other activities may impinge on his or her independence as a board member, and determine when relationships are such that a candidate can no longer be considered independent.).	Independent directors should not only be independent in accordance with legislative and stock exchange listing requirements, but should also act independently of management. (Part 2, Principle II, Best Practice 2) *See* Part 2, Introduction at 7 (In order to achieve the objectives of board independence, each board must be sensitive to any relationships between the CEO and the leaders of the non-management directors that could impair the appropriate balance between the Board's and CEO's roles. Each board should be particularly sensitive to the possibility of such relationships and should tailor its inquiries about these relationships to its company's particular circumstances . . .).	*Not covered directly, but see* Principle VI.E (The board should be able to exercise objective independent judgment on corporate affairs.). *See also* Annotation to Principle VI.E (In order to exercise its duties of monitoring managerial performance, preventing conflicts of interest and balancing competing demands on the corporation, it is essential that the board is able to exercise objective judgment. In the first instance this will mean independence and objectivity with respect to management . . . . The variety of board structures, ownership patterns and practices in different countries will . . . require different approaches to the issue of board objectivity. In many instances objectivity requires that a sufficient number of board members not be employed by the company or its affiliates and not be closely related to the company or its management through significant economic, family or other ties. This does not prevent shareholders from being board members. In others, independence from controlling shareholders or another controlling body will need to be emphasized. . . . This has led to both codes and the law in some jurisdictions to call for some board members to be independent of dominant shareholders . . . . In other cases, parties such as particular creditors can also exercise significant influence. Where there is a party in a special position to influence the company, there should be stringent tests to ensure the objective judgment of the board.).

[22] Under NYSE Listing Company Manual Section 303A.02, "[n]o director qualifies as 'independent' unless the board of directors affirmatively determines that the director has no material relationship with the listed company (directly or as a partner, shareholder or officer of an organization that has a relationship with the company)." Under Nasdaq Marketplace Rule 5605(a)(2), "'Independent Director' means a person other than an Executive Officer or employee of the Company or any other individual having a relationship which, in the opinion of the Company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director." Certain family, employment and close consulting and business relationships are presumptively or *per se* "material" under NYSE and Nasdaq listing rules. *See* Appendix. Section 301 of the Sarbanes-Oxley Act and Rule 10A-3 of the Securities Exchange Act of 1934 define an "independent" director (for audit committee purposes only) as one who accepts no compensation from the company other than director's fees and is not an "affiliated person" of the company or any of its subsidiaries. *Id*. *See also* 2011 ABA Guidebook at 45 ("Generally, the major securities markets provide that a director is independent only if the board makes an affirmative determination that the director is free of any material family, charitable, business, or professional relationship (other than stock ownership and the directorship) with the corporation or its management that is reasonably likely to affect objectivity.").

IV.B. Definition of "Independence"				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Independence . . . requires a lack of conflict between the director's personal, financial, or professional interests, and the interests of shareowners. (III.B.1) Each company should disclose in its annual proxy statement the definition of "independence" relied upon by its board. The board's definition of "independence" should address, at a minimum, those provisions set forth in Appendix B. (III.B.1.3) "Independent director" means a director who: • Is not currently, or within the last five years has not been, employed by the Company in an executive capacity. • Has not received more than $50,000 in direct compensation from the Company during any 12-month period in the last three years other than: i. Director and committee fees . . . . ii. Payments arising solely from investments in the company's securities. • Is not affiliated with a company that is an adviser or consultant . . . or a member of . . . senior management during any 12-month period in the last three years that has received more than $50,000 from the Company. • Is not a current employee of a company (customer or supplier) that has made payments to, or received payments from the Company that exceed the greater of $200,000 or 2% of such other company's consolidated gross revenues. • Is not affiliated with a not-for-profit entity (including charitable organizations) that receives contributions from the Company that exceed the greater of $200,000 or 2% of consolidated gross revenues of the recipient for that year. • Is not part of an interlocking directorate in which the CEO or other employee of the Company serves on the board of another company employing the director. • Has not had any of the relationships described above with any parent or subsidiary of the Company. • Is not a member of the immediate family of any person described in Appendix B. (Appendix B)	An independent director is someone whose only nontrivial professional, familial or financial connection to the corporation, its chairman, CEO or any other executive officer is his or her directorship. Stated most simply, an independent director is a person whose directorship constitutes his or her only connection to the corporation. (§ 7.2) A director will not be considered independent if he or she: • Is, or in the past five years has been, or whose relative is, or in the past five years has been, employed by the corporation or employed by or a director of an affiliate; . . . • Is, or in the past five years has been, or whose relative is, or in the past five years has been, an employee, director or greater-than-20-percent owner of a firm that is one of the corporation's or its affiliate's paid advisers or consultants or that receives revenue of at least $50,000 for being a paid adviser or consultant to an executive officer of the corporation; . . . • Is, or in the past five years has been, or whose relative is, or in the past five years has been, employed by or has had a five percent or greater ownership interest in a third-party that provides payments to or receives payments from the corporation and either: (i) such payments account for one percent of the third-party's or one percent of the corporation's consolidated gross revenues in any single fiscal year; or (ii) if the third-party is a debtor or creditor of the corporation and the amount owed exceeds one percent of the corporation's or third party's assets. Ownership means beneficial or record ownership, not custodial ownership; • Has, or in the past five years has had, or whose relative has paid or received more than $50,000 in the past five years under, a personal contract with the corporation, an executive officer or any affiliate of the corporation; . . . • Is, or in the past five years has been, or whose relative is, or in the past five years has been, an employee or director of a foundation, university or other non-profit organization that receives significant grants or endowments from the corporation, one of its affiliates or its executive officers	The definition of independence should not be limited to stock exchange listing standards. At a minimum, we believe that to be independent a director and his or her immediate family members should have neither present or recent employment with the company, nor any substantial connection of a personal or financial nature other than ownership of equity in the company. Boards should be mindful that personal or business relationships, even without a financial component, can compromise independence. Any director who a disinterested observer would reasonably consider to have a "substantial" relationship with the company should not be considered independent. Independence requirements should be interpreted broadly to ensure there is no conflict of interest, in fact or in appearance, that might compromise a director's objectivity and loyalty to shareholders. (p. 15)	A director is defined as independent if he or she either has only one nontrivial connection to the corporation – that of his or her directorship – or is a rank-and-file employee. A director generally will not be considered independent if currently or previously employed by the company or an affiliate in an executive capacity; if employed by a present or former auditor of the company in the past five years; if employed by a firm that is one of the company's paid advisors or consultants; if employed by a customer or supplier with a non-trivial business relationship; if employed by a foundation or university that receives grants or endowments from the company; if the person has any personal services contract with the company; if related to an executive or director of the company; or if an officer of a firm on which the company's chairman or chief executive officer also is a board member. (Guideline IV.A.1.1) *See* Guideline IV.A.10 ([T]he voting fiduciary should generally support efforts to enhance board of director independence. This includes, but is not limited to, proposals to require . . . the company to adopt a stricter definition of director independence consistent with the definition of director independence . . . above . . . .).	<u>Proxy Voting Guidelines</u> <u>Inside Director (I)</u> • Current employee or current officer of the company or one of its affiliates. • Beneficial owner of more than 50 percent of the company's voting power . . . . • Director named in the Summary Compensation Table (excluding former interim officers). <u>Affiliated Outside Director (AO)</u> • Board attestation that an outside director is not independent. • Former CEO of the company…, of an acquired company within the past five years, [or] [f]ormer interim officer if the service was longer than 18 months. If the service was [12-18] months an assessment of the interim CEO's employment agreement will be made. • Former officer of the company, an affiliate or an acquired firm within the past five years. • Officer of a former parent or predecessor firm at the time the company was sold or split off from the parent/predecessor within the past five years. • Officer, former officer, or general or limited partner of a joint venture or partnership with the company. • Immediate family member of a current or former officer of the company or its affiliates within the last five years. • Immediate family member of a current employee of [the] company or its affiliates where additional factors raise concern (which may include, but are not limited to, the following: a director related to numerous employees; the company or its affiliates employ relatives of numerous board members; or a non-Section 16 officer in a key strategic role). • Currently provides (or an immediate family member provides) professional services to the company, to an affiliate of the company or an individual officer of the company or one of its affiliates in excess of $10,000 per year. • Is (or an immediate family member is) a partner in, or a controlling shareholder or an employee of, an organization which provides professional services to the company, to an affiliate of the company, or an individual officer of the company or one of its affiliates in excess of $10,000 per year. • Has (or an immediate family member has) any mate-

IV.B. Definition of “Independence”				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
	or has been a direct beneficiary of any donations to such an organization;… • Is, or in the past five years has been, or whose relative is, or in the past five years has been, part of an interlocking directorate in which the CEO or other employee of the corporation serves on the board of a third-party entity (for-profit or not-for-profit) employing the director or such relative; • Has a relative who is, or in the past five years has been, an employee, a director or a five percent or greater owner of a third-party entity that is a significant competitor of the corporation; or • Is a party to a voting trust, agreement or proxy giving his/her decision making power as a director to management except to the extent there is a fully disclosed and narrow voting arrangement such as those which are customary between venture capitalists and management regarding the venture capitalists’ board seats. The foregoing describes relationships between directors and the corporation. The Council also believes that it is important to discuss relationships between directors on the same board which may threaten either director’s independence. A director’s objectivity as to the best interests of the shareowners is of utmost importance and connections between directors outside the corporation may threaten such objectivity and promote inappropriate voting blocks. As a result, directors must evaluate all of their relationships with each other to determine whether the director is deemed independent. The board of directors shall investigate and evaluate such relationships using the care, skill, prudence and diligence that a prudent person acting in a like capacity would use. (§ 7.3)			rial transactional relationship with the company or its affiliates (excluding investments in the company through a private placement). • Is (or an immediate family member is) a partner in, or a controlling shareholder or an executive officer of, an organization which has any material transactional relationship with the company or its affiliates (excluding investments in the company through a private placement). • Is (or an immediate family member is) a trustee, director, or employee of a charitable or non-profit organization that receives material grants or endowments from the company or its affiliates. • Party to a voting agreement to vote in line with management on proposals being brought to shareholder vote. • Has (or an immediate family member has) an interlocking relationship as defined by the SEC involving members of the board of directors or its Compensation Committee. • Founder of the company but not currently an employee. • Any material relationship with the company. <u>Independent Outside Director (IO)</u> No material connection to the company other than a board seat. (p. 15; footnotes on pp. 16-17) <u>QuickScore</u> *Not covered.*

IV.C. Executive Sessions of Outside Directors[23]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered directly, but see § 3.04 (The directors of a publicly held corporation who have no significant relationship with the corporation's senior executives should be entitled, acting as a body by the vote of a majority of such directors, to retain legal counsel, accountants, or other experts, at the corporation's expense, to advise them on problems arising in the exercise of their functions and powers . . . .).	The board's independent or non-management directors should have the opportunity to meet regularly in executive session, outside the presence of the CEO and any other management directors. Time for an executive session should be placed on the agenda for every regularly scheduled board meeting. The independent chairman or lead director, as applicable, should see that adequate time is reserved for these sessions, and should set the agenda for and chair these sessions. To maximize the effectiveness of executive sessions, the independent chairman or lead director, as applicable, should follow up with the CEO and other appropriate members of senior management on matters addressed in the executive sessions. (p. 26) *See* pp. 15-16 (One of the primary functions of the lead director is chairing executive sessions of a board's independent or non-management directors. The lead director should have authority to call executive sessions…).	Executive sessions, defined here as meetings comprised solely of independent directors, provide board members the opportunity to react to management proposals and/or actions in an environment free from formal or informal constraints. They also provide an opportunity for dialogue between and among independent directors that facilitates a more open and timely exchange of ideas, perspectives, and feelings. Regularly scheduled executive sessions set an expectation that private discussions among independent directors will be held as a matter of course, thus disarming concern over an action that may otherwise be perceived as unusual or threatening. Boards should adopt a policy of holding periodic executive sessions at both the full board and committee levels on a preset schedule. (p. 6)	The non-management directors should have regular, frequent meetings without the CEO or other directors who are members of management present. (Part 2, Principle I, Best Practice 7)	*Not covered directly, but see* Annotation to Principle VI.E (In a number of countries with single tier board systems, the objectivity of the board and its independence from management may be strengthened by the separation of the role of chief executive and chairman, or, if these roles are combined, by designating a lead non-executive director to convene or chair sessions of the outside directors.).

[23] Under NYSE and Nasdaq listing rules, domestic listed companies are required to hold regular executive sessions of the non-management directors without members of management present. The name of the director who will preside at these executive sessions or, alternatively, the procedure by which a presiding director will be selected for each executive session, must be disclosed by NYSE-listed companies in the proxy statement, together with information about how interested parties can communicate with either the presiding director or the non-management directors as a group. *See* Appendix. *See* 2011 ABA Guidebook at 50 ("[M]any public companies hold an executive session at every board meeting. These sessions provide a forum for non-management and independent directors to raise issues and ideas they may otherwise be reluctant to raise in the full boardroom, to share candid views about management's performance, to discuss whether board operations are satisfactory, and to raise potentially sensitive issues regarding specific members of management. These sessions are usually coordinated with meetings of the board and, if regularly scheduled, become routine and accepted by management.").

IV.C. Executive Sessions of Outside Directors				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Independent directors meet periodically (at least once a year) alone in an executive session, without the CEO. The independent board chair or lead (or presiding) independent director should preside over this meeting. (III.B.1.2) [The independent chairperson/lead director should]: • Coordinate the scheduling of board meetings and preparation of agenda material for board meetings and executive sessions of the board's independent or non-management directors. • Lead board meetings in addition to executive sessions of the board's independent or non-management directors. (Appendix C)	The independent directors should hold regularly scheduled executive sessions without any of the management team or its staff present. (§ 2.12c)	The full board and each board committee should hold regular executive sessions at which only independent directors are present. Executive sessions foster a culture of independence and provide opportunities for directors to engage in open discussion of issues that might be inhibited by the presence of management. Executive sessions can be used to evaluate CEO performance, discuss executive compensation and deal with internal board matters. (p. 18)	*Not covered directly, but see* Guideline IV.A.9 (At companies that have not adopted an independent board chairperson, the voting fiduciary should support the establishment of a lead independent director. In addition to serving as the presiding director at meetings of the board's independent directors, a lead director is responsible for coordinating the activities of the independent directors.).	Proxy Voting Guidelines *Not covered.* QuickScore *Not covered.*

IV.D. Board Access to Senior Management[24]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered.	In performing its oversight function, the board is entitled to rely on the advice, reports and opinions of management, counsel, auditors and expert advisers. The board should use care in choosing advisers, be comfortable with the qualifications of those it relies on, and hold managers and advisers accountable. The board should ask questions and obtain answers about the processes used by managers and the corporation's advisers to reach their decisions and recommendations, as well as about the substance of the advice and reports received by the board. When appropriate, the board and its committees should seek independent advice. (p. 8) Board members should have full access to senior management outside of board meetings. (p. 26)	*Not covered directly, but see* p. 2 ([The board should act] as a resource for management in matters of planning and policy. To ensure effective decision-making . . . board members must not only act as advisors, question-askers, and problem-solvers, but also as active participants and decision-makers in fostering the overall success of the company.).	*Not covered.*	The contributions of non-executive board members to the company can be enhanced by providing access to certain key managers within the company such as, for example, the company secretary and the internal auditor . . . . (Annotation to Principle VI.F)

[24] Under NYSE listing rules, domestic listed companies are required to adopt and disclose corporate governance guidelines that address director access to management. There is no comparable requirement for Nasdaq-listed companies. *See* Appendix. *See* 2011 ABA Guidebook at 99 ("[T]he board must be able to receive candid input from senior management. . . . [T]he [nominating and corporate governance] committee should consider how best to have access to senior management to ensure that input. Some nominating and corporate governance committees determine that senior officers in addition to the CEO should serve as directors, whereas others decide that attendance at board or committee meetings by senior officers in a non-director capacity is sufficient to facilitate the board's ready access to information regarding the business and operations of the corporation.").

IV.D. Board Access to Senior Management				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
The board should have a process in place by which all directors can have access to senior management. (III.B.1.7)	Directors . . . should be allowed reasonable access to management to discuss board issues. The board should periodically assess whether directors feel they have sufficient information to make well-informed decisions and reasonable access to management on matters relevant to shareowner value. For ease of implementation, such assessment may be incorporated into existing director surveys. (§ 2.12a)	*Not covered.*	*Not covered.*	Proxy Voting Guidelines *Not covered.* QuickScore *Not covered.*

IV.E. Number/Structure of Committees[25]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Every large publicly held corporation should have an audit committee . . . [that] should consist of at least three members . . . . (§ 3.05) Every publicly held corporation, except corporations a majority of whose voting securities are owned by a single person, a family group, or a control group, should establish a nominating committee . . . . (§ 3A.04(a)) Every large publicly held corporation should establish a compensation committee to implement and support the oversight function of the board in the area of compensation. (§ 3A.05(a)) [T]he executive committee of a large publicly held corporation should include a majority of directors who are free of any significant relationship with the senior executives, and the executive committee of other publicly held corporations should include enough such directors to approximate the proportion of such directors on the full board. (§ 3A.01, Comment e)	Every publicly owned corporation should have an audit committee of at least three members . . . . (p. 17) Every publicly owned corporation should have a committee . . . that addresses director nominations and corporate governance matters. [It] should have at least three members . . . . (p. 20) Every publicly owned corporation should have a committee . . . that addresses compensation issues. (p. 23) Additional committees, such as finance, public policy or responsibility, or risk management, also may be used. Some corporations find it useful to establish committees to examine special problems or opportunities in greater depth than would otherwise be feasible. (p. 17) *See* p. 10 (It is the responsibility of the board, through its corporate governance committee . . . to oversee the . . . structure . . . of the board and its committees.). *See also* pp. 17-18 (Business Roundtable believes that the functions generally performed by the audit, compensation and corporate governance committees are central to effective corporate governance [but] does not believe that a particular committee structure is essential for all corporations. What is important is that … independent [directors] address key issues effectively [including] compliance, executive compensation, financial reporting, governance, risk oversight, director nominations and succession planning.). *See also* p. 16 (Virtually all boards of directors of large, publicly owned corporations operate using committees to assist them . . . [which] permits the board to address key areas in more depth than may be possible in the full board level.).	[K]ey committees—compensation, audit, and nominating or governance . . . . (p. 5) *See* p. 5 (Boards should establish guidelines for, and discuss with some pre-defined frequency, the number of committees [and] the size and structure of committees, and the selection and rotation of committee members).	[There should be a] strong, independent Compensation Committee . . . . (Part 1, Principle I) [I]t is important that each corporation establish a committee of independent directors to oversee corporate governance issues . . . .(Part 2, Introduction) [Corporations should have] Audit Committees [which] should be vigorous in complying with the numerous new requirements imposed by the [Sarbanes-Oxley] Act and by the . . . listing standards of the New York Stock Exchange. (Part 3, Principle I) *See* Part 2, Principle VI, Best Practice 3 (Among the practices which boards should consider for establishing an ethical corporate culture are . . . designation of a board committee to oversee ethics issues . . .).	Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgment to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are ensuring the integrity of financial and nonfinancial reporting, the review of related party transactions, nomination of board members and key executives, and board remuneration. (Principle VI.E.1) The board may . . . consider establishing specific committees to consider questions where there is a potential for conflict of interest. (Annotation to Principle VI.E.1) *See* Principle IV.E.2 (When committees of the board are established, their mandate, composition and working procedures should be well defined and disclosed by the board.).

[25] Under NYSE listing rules, domestic listed companies (subject to certain exemptions for "controlled companies") are required to have an audit committee, a nominating/corporate governance committee and a compensation committee. Companies may allocate the responsibilities of the nominating/corporate governance and compensation committees to committees of their own denomination, provided that the committees are comprised entirely of "independent directors." Nasdaq-listed companies (subject to certain exemptions for "controlled companies") are required to have an audit committee and, from the earlier of the company's first annual meeting after January 15, 2014 or October 31, 2014, a compensation committee, and must have board nomination decisions or recommendations made by independent directors. *See* Appendix. *See also* 2011 ABA Guidebook at 59 ("No universal mandate exists for a particular committee structure, except for certain actions and duties. In particular, federal law and the major securities markets' listing standards require the audit, compensation, and nominating/corporate governance committees to be composed of independent directors…. Each board should tailor its processes and committee structure to the company's specific circumstances, including size, the complexity of its operations and risk management issues, the regulatory schemes applicable to its operations and the competitive environment in which it operates."); 2013 NACD Survey at 14 (Use of audit, compensation, and nominating/governance committees is nearly universal. Prevalence of other standing committees: executive – 24.5%, finance – 19.5%, risk – 13.1%, strategic planning – 7.0%, investment – 6.3%, legal/compliance – 5.3%, mergers & acquisitions – 5.0%, technology – 4.5%, environmental policy – 4.4%, social responsibility – 2.9%, employee benefits/retirement plan – 2.8%, HR/labor relations/management development – 2.2%, ethics – 1.6%.); 2013 Spencer Stuart Board Index at 27 (audit – in place at 100% of S&P 500 companies, compensation/HR – 100%, nominating/governance – 99%, executive - 36%, finance - 31%, public policy/social & corporate responsibility – 11%, risk – 8%, science & technology – 8%, environment, health and safety - 8%, legal/compliance - 6%, strategy and planning – 4%, investment/pension – 3%, and acquisitions/corporate development – 2%.).

IV.E. Number/Structure of Committees				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Committees who perform the audit, director nomination and executive compensation functions should consist entirely of independent directors. (III.B.1.8) Should the board decide to have other committees (e.g. executive committee) in addition to those required by law, the duties and membership of such committees should be fully disclosed. (III.B.1.9) The independent chairperson [or lead director should] [r]ecommend to the full board the membership of the various board committees, as well as selection of the committee chairs. (Appendix C)	Companies should have audit, nominating and compensation committees, and all members of these committees should be independent. (§ 2.5)	Boards should establish at least three standing committees — an audit committee, a compensation committee and a nominating and governance committee — all composed exclusively of independent directors. The credibility of the board will depend in large part on the vigorous demonstration of independence by these standing committees. (p. 18) In addition to the three primary standing committees established through laws and listing standards, boards should also establish additional committees as needed to fulfill their duties. These may include executive, corporate governance, finance, technology, investment, customers and product, operations, human resources, public affairs, sustainability and risk committees. (p. 20) TIAA-CREF will generally vote against shareholder resolutions asking the company to establish specific board committees unless we believe specific circumstances dictate otherwise. (p. 30)	Companies listed on U.S. stock exchanges are generally required to have audit, nominating and compensation committees . . . . (Guideline IV.A.1.6)	<u>Proxy Voting Guidelines</u> Generally vote AGAINST shareholder proposals to establish a new board committee, as such proposals seek a specific oversight mechanism/structure that potentially limits a company's flexibility to determine an appropriate oversight mechanism for itself. However, the following factors will be considered: • Existing oversight mechanisms (including current committee structure) regarding the issue for which board oversight is sought; • Level of disclosure regarding the issue for which board oversight is sought; • Company performance related to the issue for which board oversight is sought; • Board committee structure compared to that of other companies in its industry sector; and/or • The scope and structure of the proposal. (p. 19) <u>QuickScore</u> *Not covered directly, but see* Topic Heading IV.F, *above.*

IV.F. Independence/Qualifications of Committee Members[26]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
The audit committee . . . should be composed exclusively of directors who are neither employed by the corporation nor were so employed within the two preceding years, including at least a majority of members who have no significant relationship with the corporation's senior executives. (§ 3.05) [The] nominating committee [should be] composed exclusively of directors who are not officers or employees of the corporation, including at least a majority of members who have no significant relationship with the corporation's senior executives. (§ 3A.04(a)) The [compensation] committee should be composed exclusively of directors who are not officers or employees of the corporation, including at least a majority of members who have no significant relationship with the corporation's senior executives. (§ 3A.05(a)) [T]he executive committee of a large publicly held corporation should include a majority of directors who are free of any significant relationship with the senior executives, and the executive committee of other publicly held corporations should include enough such directors to approximate the proportion of such directors on the full board. (§ 3A.01, Comment e)	[Q]ualifications required for committee membership should be clearly defined and set out in a written charter . . . Every publicly-owned corporation should have an audit committee of at least three members, who should all be independent directors. . . . The listing standards of the major securities markets require that all members of the audit committee qualify as independent directors under applicable listing standards . . . and that they meet additional, heightened independence criteria. Audit committee members should meet minimum financial literacy standards, as required by the listing standards of the major securities markets, and at least one member of the audit committee should be an audit committee financial expert, as determined by the board in accordance with regulations of the Securities and Exchange Commission. (p. 17) Every publicly owned corporation should have a committee composed solely of independent directors that addresses director nominations and corporate governance matters. (p. 20) Every publicly owned corporation should have a committee composed solely of independent directors that addresses compensation issues. . . . All committee members should have and maintain sufficient knowledge of executive compensation and related issues to perform their duties effectively. (p. 23)	Boards should require that key committees—compensation, audit, and nominating or governance—include only independent directors . . . . (p. 5)	The Compensation Committee should be comprised solely of directors who are free of any relationships with the company (except for compensation received in their role as directors) and its management and who can act independently of management in carrying out their responsibilities. (Part 1, Principle I, Best Practice 2) The nominating/governance committee should be composed entirely of independent directors. (Part 2, Principle IV) Members of the audit committee must be independent and have both knowledge and experience in auditing financial matters. The [Sarbanes-Oxley] Act also requires that the company disclose whether or not the audit committee has a member who is a "financial expert". . . . (Part 3, Principle I)	[Board] committees may require a minimum number or be composed entirely of nonexecutive members. In some countries, shareholders have direct responsibility for nominating and electing nonexecutive directors to specialised functions. (Annotation to Principle VI.E.1) It is increasingly regarded as good practice in many countries for independent board members to have a key role on [the nominating/corporate governance] committee. (Annotation to Principle II.C.3) Stock exchange listing requirements that address a minimal threshold for . . . audit committee independence have proved useful, while not unduly restrictive or burdensome. (Millstein Report, Perspective 15)

[26] Under NYSE listing rules, domestic listed companies (subject to certain exemptions for "controlled companies") are required to have an audit committee, a nominating/corporate governance committee and a compensation committee, and all three committees must consist exclusively of "independent" directors. Nasdaq-listed companies (subject to certain exemptions for "controlled companies") are required to have an audit committee and, from the earlier of the company's first annual meeting after January 15, 2014 or October 31, 2014, a compensation committee, and both committees must be comprised of "independent directors," and must have board nomination decisions or recommendations made by "independent directors." Audit committee members of NYSE-listed companies must be financially literate or become so within a reasonable period of time, and the audit committee must include at least one director with accounting or related financial management expertise. Audit committee members of Nasdaq-listed companies must be able to read and understand fundamental financial statements at the time of appointment, and the audit committee must include at least one financially sophisticated director. The Sarbanes-Oxley Act requires that companies disclose whether or not the audit committee includes at least one member who is an "audit committee financial expert" and, if not, the reasons. See Appendix. See also 2011 ABA Guidebook at 63-64 ("The board should select committee members using criteria appropriate to the committee's purpose and in compliance with any applicable legal and stock exchange requirements…. Committee membership criteria may include: experience relevant to committee responsibilities; subject matter expertise that will assist the committee in its work; committee members' ability to meet requisite time commitments; disinterest in the committee's subject matter; and independence from management, as appropriate."); *id.* at 102 ("[T]he nominating and governance committee should . . . recommend qualifications for membership on committees.").

IV.F. Independence/Qualifications of Committee Members				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Generally, a company's retiring CEO should not continue to serve as a director on the board and at the very least be prohibited from sitting on any of the board committees. (III.B.1.6) Committees who perform the audit, director nomination and executive compensation functions should consist entirely of independent directors. (III.B.1.8) Audit committee financial expertise at a minimum should include skill-sets as outlined by Section 407(d)(5)(i) of Regulation S-K and the Exchange listing requirements. Boards should consider the effectiveness of the audit committee and designated financial expert(s) in its annual assessment. Firms may be able to reduce their cost of capital as related to the quality of its financial reporting. The quality of financial reporting can be increased by appropriately structuring the audit committee with effective financial expertise. (III.B.4.11)	[A]ll members of [the audit, nominating and compensation] committees should be independent . . . . (§ 2.5) [Members of the compensation committee] should represent diverse backgrounds and professional experiences. (§ 5.5a)	Boards should establish at least three standing committees — an audit committee, a compensation committee and a nominating and governance committee — all composed exclusively of independent directors. The credibility of the board will depend in large part on the vigorous demonstration of independence by these standing committees. (pp. 18-19) [Compensation] Committee members should have an understanding of competitive compensation and be able to critically compare the company's plans and practices to those offered by the company's peers. Committee members should be independent-minded, well informed, capable of dealing with sensitive decisions and scrupulous about avoiding conflicts of interest. Committee members should understand the relationship of individual components of compensation to total compensation. (p. 19)	The audit, compensation and nominating committees provide critical oversight roles over management and should include a higher standard of independence than that of the full board. Companies listed on U.S. stock exchanges are generally required to have audit, nominating and compensation committees that are entirely composed of independent directors. The trustees believe this is the appropriate level of independence for these key board committees. The fiduciary should withhold votes from any director nominee serving on these key committees who is non-independent . . . . (Guideline IV.A.1.6) Independence is critical for directors to carry out their duties to select, monitor and compensate management, and the voting fiduciary should generally support efforts to enhance board of director independence. This includes, but is not limited to, proposals to require . . . that 100% of the directors on key committees (nominating, compensation and audit) be independent . . . . (Guideline IV.A.10)	<u>Proxy Voting Guidelines</u> Vote AGAINST or WITHHOLD from Inside Directors and Affiliated Outside Directors . . . when: • [I]nside or affiliated outside director serves on any of . . . the [key committees]; • [C]ompany lacks an audit, compensation, or nominating committee so that the full board functions as that committee; [or] • [C]ompany lacks a formal nominating committee, even if board attests that the independent directors fulfill the functions of such a committee . . . . (p. 13) Generally vote FOR shareholder proposals requiring that the chairman's position be filled by an independent director, unless the company . . . maintains the following counterbalancing governance structure[, including] [f]ully independent key committees . . . . (pp. 19-20) Vote FOR shareholder proposals asking that . . . [key] committees be composed exclusively of independent directors unless they currently meet that standard. (p. 20) Generally vote AGAINST proposals seeking a policy to prohibit any outside CEO from serving on a company's compensation committee, unless . . . problematic pay practices . . . raise concerns about the performance and composition of the committee. (p. 54) <u>QuickScore</u> What percentage of nominating committee members are independent based on ISS standards? (Question 19) What is the independent status of the compensation committee members? (Question 25) What is the independent status of the audit committee members? (Question 31) Do the directors with [related party transactions] sit on key board committees? (Question 51) *See* Topic Heading VI.A, *below*.

IV.G. Assignment & Rotation of Committee Members[27]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
The nominating committee should . . . [r]ecommend to the board directors to fill the seats on board committees. (§ 3A.04(b)(3)) [T]he committee structure is sufficiently important in carrying out the board's oversight function that a separate organ [the nominating committee] should be vested with the function of considering questions of committee composition, to ensure that those questions receive regular and careful attention. As in the case of nominations to the board itself, it is to be expected that the chief executive officer, although not a member of the nominating committee, would often be active in recommending and discussing committee assignments. (§ 3A.04, Comment d)	Decisions about committee membership and chairs should be made by the full board based on recommendations from the corporate governance committee. Consideration should be given to whether periodic rotation of committee memberships and chairs would provide fresh perspectives and enhance directors' understanding of different aspects of the corporation's business, consistent with applicable listing standards. (p. 16) The corporate governance committee . . . recommends directors for appointment to committees of the board. The committee should periodically review the board's committee structure and annually recommend candidates for membership on the board's committees. The committee should see that the key board committees, including the audit, compensation and corporate governance committees, are composed of directors who meet applicable independence and qualification standards. (p. 22)	Boards should establish guidelines for, and discuss with some pre-defined frequency . . . the selection and rotation of committee members. (p. 5)	[T]he nominating/governance committee should recommend to the full board of directors . . . committee assignments . . . . (Part 2, Principle IV, Best Practice 1)	*Not covered directly, but see* Topic Headings IV.E *and* F, *above*.

[27] *See* 2011 ABA Guidebook at 63-64 ("The board should select committee members using criteria appropriate to the committee's purpose and in compliance with any applicable legal and stock exchange requirements…. Committee membership criteria may include: experience relevant to committee responsibilities; subject matter expertise that will assist the committee in its work; committee members' ability to meet requisite time commitments; disinterest in the committee's subject matter; and independence from management, as appropriate."); *id.* at 102 ("[The nominating and governance] committee should . . . recommend qualifications for membership on committees …. Although some boards have a policy of periodic rotation of committee memberships among the directors to develop expertise and allocate equitably the time commitment, rotation may be more difficult for the audit committee than for others...").

IV.G. Assignment & Rotation of Committee Members				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
The independent chairperson [or lead director should] [r]ecommend to the full board the membership of the various board committees, as well as selection of the committee chairs. (Appendix C)	The board (not the CEO) should appoint the committee chairs and members . . . The process by which committee members and chairs are selected should be disclosed to shareowners. (§ 2.5) The board should implement and disclose a board succession plan that involves preparing for . . . committee assignment rotations [and] committee chair nominations. (§ 2.8a) [Compensation committee] membership should rotate periodically among the board's independent directors . . . . (§ 5.5a)	*Not covered directly, but see* Topic Heading IV.F, *above.*	*Not covered directly, but see* Topic Heading IV.F, *above.*	<u>Proxy Voting Guidelines</u> *Not covered.* <u>QuickScore</u> *Not covered.*

IV.H. Audit Committee Meeting Frequency, Length & Agenda[28]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Every large publicly held corporation should have an audit committee to implement and support the oversight function of the board by reviewing on a periodic basis the corporation's processes for producing financial data, its internal controls, and the independence of the corporation's external auditor. (§ 3.05) It is recommended . . . that [t]he audit committee . . . should: a) Recommend the firm to be employed as . . . external auditor and review . . . discharge of any such firm; b) Review the external auditor's compensation, the proposed terms of engagement, and its independence; c) Review the appointment and replacement of the senior internal auditing executive, if any; d) Serve as channel of communication between the external auditor and the board and between the senior internal auditing executive, if any, and the board; e) Review the results of each external audit . . . and management's responses . . . ; f) Review the . . . annual financial statements, any . . . opinion . . . by the external auditor . . . and any significant disputes between management and the external auditor. . .; g) Consider . . . the adequacy of . . . internal controls; h) Consider . . . major questions of choice respecting appropriate auditing and accounting principles and practices to be used in the preparation of . . . financial statements, when presented by the external auditor, a principal senior executive, or otherwise.(§ 3A.03) *See* Topic Headings IV.L *and* VII.G, *below*.	The audit committee is responsible for supervising the corporation's relationship with its outside auditor. . . [and] for overseeing the corporation's financial reporting process. . . . The audit committee should oversee the corporation's system of internal controls over financial reporting and its disclosure controls and procedures. . . . Unless the full board or one or more other committees do so, the audit committee should oversee the corporation's program that addresses compliance with ethical and legal standards and important corporate policies. . . . [and] should establish procedures for receiving and handling complaints and concerns related to potential violations of law or the corporation's code of conduct, including concerns relating to accounting, internal accounting controls and auditing issues . . . Unless the full board or another committee does so, the audit committee should . . . oversee the corporation's risk assessment and risk management process. … The audit committee should oversee the corporation's internal audit function. . . . The audit committee should implement a policy covering the hiring of personnel who previously worked for the corporation's outside auditor. . . . Audit committee meetings should be held at least quarterly, with additional meetings held frequently enough to allow the committee to monitor the corporation's financial reporting appropriately. Meetings should be scheduled with enough time to permit and encourage active discussions with management and the internal and outside auditors. . . . The audit committee should also hold private sessions on a regular basis with senior management responsible for the corporation's legal function to facilitate the communication of concerns regarding legal compliance and significant legal contingencies . . . [and] should consider whether to hold private sessions from time to time with other parties. (pp. 18-20) *See generally* Audit Committee, pp. 17-20 *and* Topic Headings IV.L, VII.G *and* VII.H, *below*.	*Not covered directly, but see* p. 4 (For committee meetings, committee chairs should work with the CEO and committee members to create agendas (incorporating other board members' input as provided) and to ensure that all relevant materials are provided in a timely manner prior to each meeting.). *See also* p. 5 (Boards should establish guidelines for . . . committees . . . .). *See also* Topic Heading VII.G, *below*. *See also* REPORT OF THE NACD BLUE RIBBON COMMISSION ON AUDIT COMMITTEES (2002).	Among the many new duties and responsibilities that the [Sarbanes-Oxley] Act imposes are the requirements that the audit committee be responsible for the appointment, compensation and oversight of the work of auditors, and that the outside auditors report directly to the audit committee. In addition, the audit committee of a public company must pre-approve all the services, whether audit or nonaudit, that are provided to a public company by a registered accounting firm. (Part 3, Principle I) The internal auditor should have a direct line of communication and reporting responsibility to the audit committee, and he or she should attend all regularly scheduled audit committee meetings, report on the status of audits conducted by the internal audit group, report to the committee on other matters that the internal auditor, in his or her judgment, believes should be brought to the audit committee's attention, and meet with the audit committee in executive session. (Part 3, Principle III, Best Practice 3) *See* Topic Headings IV.L *and* VII.G, *below*.	It is increasingly common for external auditors to be recommended by an independent audit committee of the board or an equivalent body and to be appointed either by that committee/body or by shareholders directly. (Annotation to Principle V.C) The audit committee or an equivalent body is often specified as providing oversight of the internal audit activities and should also be charged with overseeing the overall relationship with the external auditor including the nature of nonaudit services provided by the auditor to the company. (Annotation to Principle V.C) In fulfilling its control oversight responsibilities it is important for the board to encourage the reporting of unethical/unlawful behaviour without fear of retribution. . . . In a number of companies either the audit committee or an ethics committee is specified as the contact point for employees who wish to report concerns about unethical or illegal behaviour that might also compromise the integrity of financial statements. (Annotation to Principle VI.D.6) *See* Topic Headings IV.L *and* VII.G, *below*.

[28] Under NYSE and Nasdaq listing rules, the audit committee is required to adopt and disclose a written charter that addresses its purpose and responsibilities. Under the Sarbanes-Oxley Act, the audit committee of a public company is to be responsible for the appointment, compensation and oversight of the work of auditors. In addition, the audit committee must pre-approve all services, whether audit or non-audit, provided to the public company by a registered accounting firm. *See* Appendix. *See also* 2013 NACD Survey at 17 (The average number of in-person meetings per year for audit committees was 5.1 (3.2 meetings by telephone or other electronic means), spanning an average of 2.7 hours per in-person meeting.); 2013 Spencer Stuart Board Index at 28 (Audit committees met on average 8.7 times a year, with 23% of audit committees meeting 11 or more times in 2013.); 2011 ABA Guidebook at 77 ("The audit committee should discuss and determine the number of meetings it needs to hold annually in order to deal effectively with its responsibilities. The major securities markets' listing standards require audit committees to review quarterly and annual reports filed with the SEC, and as a result, the audit committee should meet at least four times a year. It is common for public company audit committees to have an in-person or telephonic meeting with the company's CEO, CFO, other senior financial managers, and external auditor in advance of each quarterly or annual earnings release. As a result, almost all audit committees schedule at least four, and some as many as five to eight, meetings per year.").

IV.H. Audit Committee Meeting Frequency, Length & Agenda				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
To limit the risk of possible conflicts of interest and independence of the auditor, non-audit services and [related] fees should both be approved in advance by the Audit Committee and [annually] disclosed in the proxy statement. (III.B.4.7) To ensure the integrity of audited financial statements, the corporation's interaction with the external auditor should be overseen by the audit committee. (III.B.4.10) [T]he Audit Committee should [disclose annually]: a. Assessment of the independence and objectivity of the external auditor to assure the auditors and their staff have no financial, business, employment or family and other personal relationships with the company; b. Assessment of the appropriateness of total fees charged by the auditors; c. Assessment of non-audit services and fees charged including limitations or restrictions tied to the provision of non-audit services; d. Explanation of why non-audit services were provided by the auditor … and how the auditor's independence has been safeguarded; e. Rational[e] for recommending the appointment, reappointment or removal of the external auditor including information on tendering frequency, tenure, and any contractual obligations that acted to restrict the choice of external auditors; f. Auditor rotation period; g. Assessment of issues which resulted in auditor resignation. (III.B.4.15) The auditor should articulate to the Audit Committee, risks and other matters arising from the audit that are significant to the oversight of the financial reporting process, including situations where the auditor is aware of disputes or concerns raised regarding accounting or auditing matters. (III.B.4.16) *See* Topic Headings IV.L *and* VII.G, *below*.	The audit committee should fully exercise its authority to hire, compensate, oversee and, if necessary, terminate the company's independent auditor. (§ 2.13a) The audit committee should seek competitive bids for the external audit engagement at least every five years. (§ 2.13b) *See* Topic Headings IV.L *and* VII.G, *below*.	The Audit Committee oversees the company's accounting, compliance and in most cases risk management practices. It is responsible for ensuring the full and fair disclosure of the company's financial condition. The Audit Committee operates at the intersection of the board, management, independent auditors and internal auditors. It has sole authority to hire and fire the corporation's independent auditors and to set and approve their compensation. The Audit Committee is also responsible for overseeing the adequacy and effectiveness of the company's internal controls. The internal audit team should report directly to the Audit Committee. (p. 19) *See* Topic Headings IV.L *and* VII.G, *below*.	The audit, compensation and nominating committees provide critical oversight roles over management . . . . (Guideline IV.A.1.6) *See* Guideline IV.A.1.7 (The fiduciary should take into consideration the performance of the key committees (audit, compensation and nominating committees), particularly with regard to advancing and upholding the principles established in these Guidelines. Factors to consider include specific actions of the committees (e.g. … failing to address auditor conflicts of interest) and the quality of committee disclosure.). *See* Topic Headings IV.L *and* VII.G, *below*.	<u>Proxy Voting Guidelines</u> *Not covered.* <u>QuickScore</u> *Not covered directly, but see* Topic Heading IV.L, *below*.

IV.I. Nominating/Corporate Governance Committee Meeting Frequency, Length & Agenda[29]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
The nominating committee should: 1) Recommend to the board candidates for all directorships to be filled by the shareholders or the board. 2) Consider, in making its recommendations, candidates for directorships proposed by the chief executive officer and, within the bounds of practicability, by any other senior executive or any director or shareholder. 3) Recommend to the board directors to fill the seats on board committees. (§ 3A.04(b)) The nominating committee may also perform other functions that are related to the functions set out in Subsection (b). One such function is the recommendation of policies on board composition, criteria for membership, and continuation on the board. . . . Another function . . . is the recommendation of removal of directors prior to expiration of their term of office when such removal seems warranted. . . . The nominating committee may also perform functions, not directly related to the functions set out in Subsection (b), that are assigned to it by a standard of the corporation . . . [including] reviewing the compensation of directors, recommending candidates to fill vacancies in principal senior executive offices, reviewing proposed personnel changes involving such executives, regularly reviewing key personnel, and periodically reviewing management succession plans. (§ 3A.04, Comment e) *See* Topic Headings III.A *above*, *and* VII.F *and* IX.A, *below*.	The corporate governance committee recommends director nominees to the full board and the corporation's shareholders, oversees the composition, structure, operation and evaluation of the board and its committees, and plays a leadership role in shaping the corporate governance of the corporation. . . . [It] also may oversee the compensation of the board. . . . [and] should engage in succession planning for the board. (p. 20) The corporate governance committee should monitor and safeguard the independence of the board [ensuring that] a substantial majority of the directors on the board meet appropriate standards of independence that are consistent with securities market listing standards. . . . The corporate governance committee should conduct an annual evaluation of the board's leadership structure to assess whether the current leadership structure remains appropriate . . . [and] also recommends directors for appointment to committees of the board. . . . The corporate governance committee should oversee the effective functioning of the board . . . [and] develop and recommend to the board a set of corporate governance principles, review them annually and recommend changes to the board as appropriate. . . . The corporate governance committee should oversee the evaluation of the board and its committees. (pp. 21-23) *See generally* Corporate Governance Committee, pp. 20-23, *and* Topic Headings III.A *above*, *and* IX.A, *below*. *See also* Business Roundtable, THE NOMINATING PROCESS AND CORPORATE GOVERNANCE COMMITTEES: PRINCIPLES AND COMMENTARY (April 2004).	*Not covered directly, but see* p. 4 (For committee meetings, committee chairs should work with the CEO and committee members to create agendas (incorporating other board members' input as provided) and to ensure that all relevant materials are provided in a timely manner prior to each meeting.). *See also* p. 5 (Boards should establish guidelines for . . . committees . . . .). *See also* Topic Headings II.A *and* III.A *above*, *and* IX.A, *below*. *See also* REPORT OF THE NACD BLUE RIBBON COMMISSION ON THE GOVERNANCE COMMITTEE (2007).	The nominating/governance committee should be responsible for nominating qualified candidates to stand for election to the board, monitoring all matters involving corporate governance and making recommendations to the full board for action in governance matters. (Part 2, Principle IV) At a minimum, the nominating/corporate governance committee should recommend to the full board of directors: a. an appropriate board organization, including committee assignments; b. qualifications for board membership; c. an appropriate slate of qualified nominees for election to the board that they have identified and evaluated; d. requirements for, and means of, director orientation and training; e. corporate governance principles for adoption by the full board; and f. candidates for CEO succession. (Part 2, Principle IV, Best Practice 1) *See also* Topic Headings III.A *and* III.C, *above*, *and* VII.F *and* IX.A, *below*.	With respect to nomination of candidates, boards in many companies have established nomination committees to ensure proper compliance with established nomination procedures and to facilitate and coordinate the search for a balanced and qualified board. (Annotation to Principle II.C.3) These Principles promote an active role for shareholders in the nomination and election of board members. The board has an essential role to play in ensuring that this and other aspects of the nominations and election process are respected. First, while actual procedures for nomination may differ among countries, the board or a nomination committee has a special responsibility to make sure that established procedures are transparent and respected. Second, the board has a key role in identifying potential members for the board with the appropriate knowledge, competencies and expertise to complement the existing skills of the board and thereby improve its value-adding potential for the company. In several countries there are calls for an open search process extending to a broad range of people. (Annotation to Principle VI.D.5) *See also* Topic Headings II.A *and* III.A *above*, *and* IX.A, *below*.

[29] Under NYSE listing rules, the nominating/corporate governance committee is required to adopt and disclose a written charter that addresses its purpose and responsibilities. Nasdaq-listed companies are required to adopt and disclose a written charter or board resolution that addresses the nomination process. *See* Appendix. *See also* 2011 ABA Guidebook at 99 ("[T]he board must be able to receive candid input from senior management. . . . [T]he [nominating and corporate governance] committee should consider how best to have access to senior management to ensure that input. Some nominating and corporate governance committees determine that senior officers in addition to the CEO should serve as directors, whereas others decide that attendance at board or committee meetings by senior officers in a non-director capacity is sufficient to facilitate the board's ready access to information regarding the business and operations of the corporation."); *id.* at 102 ("[The nominating and governance] committee should . . . recommend qualifications for membership on committees."); 2013 NACD Survey at 17 (The average number of in-person meetings per year for governance/nominating committees was 3.6 (4.4 meetings by telephone or other electronic means), for an average of 1.8 hours per in-person meeting); 2013 Spencer Stuart Board Index at 28 (Nominating/governance committees met on average 4.7 times a year, with 49% of nominating/governance committees meeting 5 or more times in 2013.).

IV.I. Nominating/Corporate Governance Committee Meeting Frequency, Length & Agenda				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Not covered directly, but see III.A.8 (Shareowners should have effective access to the director nomination process.) *See also* Appendix C (The independent chairperson [or lead director should] interview, along with the chair of the nominating committee, all board candidates, and make recommendations to the nominating committee and the board.). *See also* Topic Headings II.A *and* III.A *above, and* IX.A, *below.*	*Not covered directly, but see* § 1.5 (Shareowners should have . . . meaningful opportunities to suggest or nominate director candidates and to suggest processes and criteria for director selection and evaluation.). *See also* § 2.8b (Nominating committee charters, or equivalent, ought to reflect that boards should be diverse, including such considerations as background, experience, age, race, gender, ethnicity, and culture.). *See also* Topic Headings II.A *and* III.A *above, and* IX.A, *below.*	The Nominating and Governance Committee oversees the company's corporate governance practices and the selection and evaluation of directors. The committee is responsible for establishing board structure and governance policies that conform to regulatory and exchange listing requirements and ensuring the appropriate and effective board oversight of the company's business. When the company's board structure and/or governance policies are not consistent with generally accepted best practices, the committee should ensure that shareholders are provided with a reasonable explanation why the selected structure and policies are appropriate. (pp. 19-20) *See* Topic Headings II.A *and* III.A *above, and* VII.F *and* IX.A, *below.*	The audit, compensation and nominating committees provide critical oversight roles over management . . . . (Guideline IV.A.1.6) *See* Guideline IV.A.1.7 (The fiduciary should take into consideration the performance of the key committees (audit, compensation and nominating committees), particularly with regard to advancing and upholding the principles established in these Guidelines. Factors to consider include specific actions of the committees . . . and the quality of committee disclosure.). *See* Topic Headings II.A *and* III.A *above, and* IX.A, *below.*	<u>Proxy Voting Guidelines</u> *Not covered.* <u>QuickScore</u> Most nominating committees are responsible for developing a policy on the size and composition of the board and for identifying and approving nominees for vacant positions on the board of directors. The committee should have the benefit of the CEO's involvement in the selection process, but the responsibility for selection of board nominees should be that of independent directors. (Question 19)

IV.J. Compensation Committee Meeting Frequency, Length & Agenda[30]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
The compensation committee should: (1) Review and recommend to the board, or determine, the annual salary, b bonus, stock options, and other benefits, direct and indirect, of the senior executives. (2) Review new executive compensation programs; review on a periodic basis the operation of the corporation's executive compensation programs to determine whether they are properly coordinated; establish and periodically review policies for the administration of executive compensation programs; and take steps to modify any executive compensation programs that yield payments and benefits that are not reasonably related to executive performance; (3) Establish and periodically review policies in the area of management perquisites. (§ 3A.05(b)) [T]he committee should normally arrange for staff advice . . . regarding general levels of executive compensation and emerging trends in management remuneration. The committee may also want to engage outside consultants . . . to provide guidance on compensation policies and practices. (§ 3A.05, Comment d) [T]he compensation committee (rather than the nominating committee . . .) might be assigned the functions of reviewing candidates for principal senior executive offices and reviewing the corporation's executive-development programs to assure middle-management strength. (§ 3A.05, Comment e) *See* Topic Headings II.C*, above and* VII.E*, below*.	The compensation committee's responsibilities include overseeing the corporation's overall compensation structure, policies and programs; establishing or recommending to the board performance goals and objectives for the CEO and other members of senior management . . . and establishing or recommending to the independent directors compensation for the CEO and senior management. The compensation committee should see that the corporation's compensation policies reflect the core principle of pay for performance and establish meaningful goals for performance-related compensation paid to senior management. (p. 23) The compensation committee should require senior management to build and maintain significant continuing equity investment in the corporation. . . . In addition to reviewing and setting compensation for senior management, the compensation committee should look more broadly at the overall compensation structure of the enterprise to determine that it establishes appropriate incentives for management and employees at all levels. . . . The compensation committee should consider whether the benefits and perquisites provided to senior management are proportional to the contributions made by management. (pp. 23-24) *See generally* Compensation Committee, pp. 23-24 *and* Topic Headings II.C, *above and* VII.E, *below*. *See also* Business Roundtable, EXECUTIVE COMPENSATION: PRINCIPLES AND COMMENTARY (January 2007).	*Not covered directly, but see* p. 4 (For committee meetings, committee chairs should work with the CEO and committee members to create agendas (incorporating other board members' input as provided) and to ensure that all relevant materials are provided in a timely manner prior to each meeting.). *See also* p. 5 (Boards should establish guidelines for . . . committees . . . .). *See also* Topic Headings II.C, *above and* VII.E, *below*. *See also* REPORT OF THE NACD BLUE RIBBON COMMISSION ON EXECUTIVE COMPENSATION AND THE ROLE OF THE COMPENSATION COMMITTEE (2003, reissued 2007).	A strong, independent Compensation Committee should take primary responsibility for ensuring that the compensation programs and values transferred to management through cash pay, stock and stock-based awards, are fair and appropriate to attract, retain and motivate management, and are reasonable in view of company economics. (Part 1, Principle I) [T]he Chair of the Compensation Committee should . . . be available at shareholders' meetings to respond directly to questions . . . . (Part 1, Principle I, Best Practice 3) No compensation arrangement should be permitted that creates an incentive for top executives to act contrary to the company's best interests or which could be interpreted as an attempt to circumvent . . . the law or accounting rules. (Part 1, Principle I, Best Practice 4) The Compensation Committee should be responsible for all aspects of executive officers' compensation arrangements and perquisites, including approval of all employment, retention, and severance agreements. (Part 1, Principle I, Best Practice 5) The Compensation Committee should approve any compensation arrangement for a senior executive officer involving any subsidiary, special purpose entity (SPE) or other affiliate. (Part 1, Principle I, Best Practice 6) The Compensation Committee should hold executive sessions as required (for example, to determine CEO pay and stock option grants) and the Committee should . . . schedule meetings and set its own agenda. (Part 1, Principle I, Best Practice 8)	It is considered good practice in an increasing number of countries that remuneration policy and employment contracts for board members and key executives be handled by a special committee of the board comprising either wholly or a majority of independent directors. There are also calls for a remuneration committee that excludes executives who serve on each others' remuneration committees, which could lead to conflicts of interest. (Annotation to Principle VI.D4) *See* Topic Headings II.C, *above and* VII. D *and* E, *below*.

[30] Under NYSE listing rules, the compensation committee is required to adopt and disclose a written charter that addresses its purpose and responsibilities. Beginning from the earlier of the company's first annual meeting after January 15, 2014 or October 31, 2014, NYSE and Nasdaq listing rules require that a listed company's compensation committee members each satisfy a heightened standard of independence, which must consider relevant factors including the receipt of consulting or advisory fees and "affiliate" status. *See* Appendix. *See also* 2013 NACD Survey at 17 (The average number of in-person meetings for compensation committees was 4.2 times a year (2.3 meetings by telephone or other electronic means) with an average of 2.7 hours per in-person meeting.); 2013 Spencer Stuart Board Index at 28 (Compensation committees met on average 6.3 times a year, with 24% of compensation committees meeting 8 or more times in 2013.).

IV.J. Compensation Committee Meeting Frequency, Length & Agenda				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
To ensure the alignment of interest with long-term shareowners, executive compensation programs are to be designed, implemented, and disclosed to shareowners by the board, through an independent compensation committee. (III.B.3.1.a) *See also* Topic Headings II.C, *above and* VII.D *and* E, *below*.	It is the job of the board of directors and the compensation committee specifically to ensure that executive compensation programs are effective, reasonable and rational with respect to critical factors such as company performance, industry considerations, risk considerations and compensation paid to other employees. It is also the job of the compensation committee to ensure that elements of compensation packages are appropriately structured to enhance the company's short- and long-term strategic goals and to retain and motivate executives to achieve those strategic goals. (§ 5.1) The compensation committee is responsible for structuring executive pay and evaluating executive performance within the context of the pay structure of the entire company, subject to approval of the board of directors. (§ 5.5) The compensation committee should vigorously oversee all aspects of executive compensation for a group composed of the CEO and other highly paid executives, as required by law, and any other highly paid employees, including executives of subsidiaries, special purpose entities and other affiliates . . . . (§ 5.5c) In addition to attending all annual and special shareowner meetings, [compensation] committee members should be available to respond directly to questions about executive compensation . . . In addition, the committee should regularly report on its activities to the independent directors of the board, who should review and ratify committee decisions. (§ 5.5f) *See generally* § 5.5 (Role of Compensation Committee) *and* Topic Headings II.C, *above and* VII. D *and* E, *below*.	The Compensation Committee is responsible for oversight of the company's compensation and benefit programs, including performance-based plans and policies that attract, motivate, retain and incentivize executive leadership to create long-term shareholder value. Committee members should have an understanding of competitive compensation and be able to critically compare the company's plans and practices to those offered by the company's peers. Committee members should be independent-minded, well informed, capable of dealing with sensitive decisions and scrupulous about avoiding conflicts of interest. Committee members should understand the relationship of individual components of compensation to total compensation. The committee, in conjunction with the full board, should confirm that the Compensation Discussion and Analysis (CD&A) accurately reflects the compensation decisions made. (p. 19) *See generally* pp. 20-24 (Executive Compensation). *See also* Topic Headings II.C, *above and* VII.E, *below*.	The audit, compensation and nominating committees provide critical oversight roles over management . . . . (Guideline IV.A.1.6) The voting fiduciary should . . . support proposals to enhance the transparency of the executive compensation process. Such proposals may include the adoption of compensation committee charters or supplemental reports on compensation practices. (Guideline IV.C.9) *See* Guideline IV.A.1.7 (The fiduciary should take into consideration the performance of the key committees (audit, compensation and nominating committees), particularly with regard to advancing and upholding the principles established in these Guidelines. Factors to consider include specific actions of the committees (e.g., approving excessive executive compensation…) and the quality of committee disclosure.). *See also* Topic Headings II.C, *above and* VII.E, *below*.	Proxy Voting Guidelines *Not covered.* QuickScore The compensation committee makes recommendations and sets guidelines for the compensation of executives of the company…. (Question 25)

IV.K. Board Access to Independent Advisors[31]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
The directors of a publicly held corporation who have no significant relationship with the corporation's senior executives should be entitled, acting as a body by the vote of a majority of such directors, to retain legal counsel, accountants, or other experts, at the corporation's expense, to advise them on problems arising in the exercise of their functions and powers . . . . (§ 3.04) *See* § 3A.05, Comment d (The [compensation] committee may . . . want to engage outside consultants from time to time to provide guidance on compensation policies and practices.). *See also* Topic Heading IV.L, *below*.	In performing its oversight function, the board is entitled to rely on the advice, reports and opinions of management, counsel, auditors and expert advisers. The board should use care in choosing advisers, be comfortable with the qualifications of those it relies on, and hold managers and advisers accountable. The board should ask questions and obtain answers about the processes used by managers and the corporation's advisers to reach their decisions and recommendations, as well as about the substance of the advice and reports received by the board. When appropriate, the board and its committees should seek independent advice. (p. 8) Where appropriate, boards and board committees should seek advice from outside advisers independent of management with respect to matters within their responsibility. . . . The board and its committees should have the authority to select and retain advisers and approve the terms of their retention and fees. (p. 27) *See* p. 18 ([T]he primary functions of the audit committee include: Selecting and retaining the auditor…). *See also* p. 23 (The compensation committee should have the authority to retain compensation consultants, counsel and other advisers to provide the committee with independent advice.). *See also* Topic Heading IV.L, *below*.	Boards should require that key committees—compensation, audit, and nominating or governance . . . are free to hire independent advisors as necessary. (p. 5) Boards and board committees occasionally need independent advice. In most cases, the company and the board can jointly satisfy their needs through the retention of a common resource. In other cases, given the different roles and responsibilities of management and the board, the board may need to retain its own professional advisors. Board members and senior management, as necessary, should concurrently participate in the selection of outside professionals who give advice both to the board and to management. Under special circumstances, the board and board committees may wish to hire their own outside counsel, consultants, and other professionals to advise the board. (p. 6)	Boards should . . . retain . . . outside advisors and staff as appropriate, to fulfill their responsibilities. (Part 2, Principle II, Best Practice 5) In the event an independent investigation is reasonably likely to implicate company executives, the board and not management should retain special counsel . . . . (Part 2, Principle VII) [T]he board of directors should assess the independence and qualifications of the members of the audit committee, using outside counsel or consultants if desirable . . . . (Part 3, Principle I, Best Practice 2) *See* Part 1, Principle I, Best Practice 1 (The Compensation Committee should retain any outside consultants who advise it, and the outside consultants should report solely to the Committee.). *See also* Part 3, Principle V (The audit committee should, if necessary, retain professional advisors with no other ties to the company to assist it in carrying out its functions.). *See also* Topic Heading IV.L, *below*.	The contributions of nonexecutive board members to the company can be enhanced by providing . . . recourse to independent external advice at the expense of the company. (Annotation to Principle VI.F) *See* Topic Heading IV.L, *below*.

[31] On June 20, 2012, the SEC adopted a new disclosure requirement relating to compensation consultant conflicts of interest. This disclosure must be included in proxy statements for meetings at which directors are to be elected occurring on or after January 1, 2013. On December 16, 2009, the SEC amended its rules to require new disclosures about fees paid to and services provided by compensation consultants and their affiliates if the consultants provide consulting services related to director or executive compensation and also provide other services to the company. NYSE and Nasdaq listing rules require that, before selecting an advisor, the compensation committee of each listed company must consider various factors bearing on independence that have been identified by the SEC. Under NYSE listing rules, domestic listed companies are required to adopt and disclose corporate governance guidelines that address director access to independent advisors. There is no comparable requirement for Nasdaq-listed companies. The audit committee of a NYSE- or Nasdaq-listed company must have sole authority to hire and fire independent auditors and the audit committee charter must give them sole authority to retain, set the retention terms of, and terminate any independent advisors that the committee deems necessary for the performance of its responsibilities. The compensation committee of a NYSE- or Nasdaq-listed company must have sole discretion to retain, set the retention terms of, and terminate any compensation consultant, legal counsel or other advisor. The charter of the nominating/corporate governance committee of a NYSE-listed company must give the committee sole authority to retain, set the retention terms of, and terminate any independent advisors the committee deems necessary for the performance of its responsibilities. The Sarbanes-Oxley Act contains provisions relating to the audit committee's hiring and oversight of outside auditors, approving any significant nonaudit relationship with the independent auditors, and engaging any outside counsel and advisors that the audit committee deems necessary for the performance of its responsibilities. *See* Appendix. *See* 2011 ABA Guidebook at 18 ("The board and board committees should have access to the corporation's regular outside counsel, if one exists, and the authority to retain their own legal counsel and professional advisors, independent of those who usually advise the corporation,."); *id.* at 20 ("If expert advice would be needed for a decision, the director should request that the board seek such advice."); *id.* at 26 ("Independent advice regarding the merits of a conflict of interest or related person transaction is generally helpful.").

IV.K. Board Access to Independent Advisors				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
The board, through its committees, should have access to adequate resources to provide independent counsel advice, or other tools that allow the board to effectively perform its duties on behalf of shareowners. (III.B.1.10) The independent chairperson [or lead director should] [a]pprove the retention of consultants who report directly to the board. (Appendix C)	Committees should be able to select their own service providers. (§ 2.4) The compensation committee should retain and fire outside experts, including consultants, legal advisers and any other advisers when it deems appropriate, including when negotiating contracts with executives. Individual compensation advisers and their firms should be independent of the client company, its executives and directors and should report solely to the compensation committee. The compensation committee should develop and disclose a formal policy on compensation adviser independence. In addition, the committee should annually disclose an assessment of its advisers' independence, along with a description of the nature and dollar amounts of services commissioned from the advisers and their firms by the client company's management. Companies should not agree to indemnify or limit the liability of compensation advisers or the advisers' firms. (§ 5.5g) Committees should have the ability to hire a compensation consultant for assistance on director compensation plans. In cases where the compensation committee does use a consultant, it should always retain an independent compensation consultant or other advisers it deems appropriate to assist with the evaluation of the structure and value of director compensation. . . . The compensation committee should disclose all instances where the consultant is also retained by the committee to provide advice on executive compensation. (§ 6.2b) *See also* Topic Heading IV.L, *below*.	Each committee should have the power to hire independent experts and advisors. (p. 20) Compensation Committees should work only with consultants who are independent of management. (p. 21) *See also* Topic Heading IV.L, *below*.	At companies that have not adopted an independent board chairperson, the voting fiduciary should support the establishment of a lead independent director. . . . [A] lead independent director . . . has the ability to hire independent consultants necessary for the independent directors to effectively and responsibly perform their duties. (Guideline IV.A.9) Executive compensation policies and plans should be created by fully independent directors – with the assistance of independent compensation consultants – and approved by shareholders. (Guideline IV.C) *See also* Topic Heading IV.L, *below*.	<u>Proxy Voting Guidelines</u> Generally vote FOR shareholder proposals seeking disclosure regarding the Company, Board, or Compensation Committee's use of compensation consultants, such as company name, business relationship(s) and fees paid. (p. 50) <u>QuickScore</u> *Not covered.*

IV.L. Auditor Independence[32]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
It is recommended . . . that [t]he audit committee . . . should: (a) Recommend the firm to be employed as the corporation's external auditor and review the proposed discharge of any such firm; (b) Review the external auditors' compensation, the proposed terms of its engagement, and its independence; (§ 3A.03) Subsection (a) . . . is designed to enhance the independence of the external auditor in the event of conflict. [In performing its functions described in Subsection (b),] the [audit] committee should carefully consider any matters that might affect the external auditor's independence, such as the extent to which the external auditor performs nonaudit services. (§ 3A.03, Comment c)	[I]t is the responsibility of the board, through its audit committee, to engage an independent accounting firm to audit the financial statements prepared by management and issue an opinion that those statements are fairly stated in accordance with [GAAP], as well as to oversee the corporation's relationship with the outside auditor. (p. 3) [S]election of an outside auditor should involve an annual due diligence process in which the audit committee reviews the qualifications (including industry expertise and geographic capabilities), work product, independence and reputation of the outside auditor, and the performance and expertise of key members of the audit team. The committee should be mindful of the schedule, mandated by applicable law and regulations, for rotating the engagement and concurring partners and should begin the process of reviewing new partners sufficiently in advance of required rotations. … The audit committee should maintain an ongoing, open dialogue with the outside auditor about independence issues. The committee should consider its overall approach to using the outside auditor as a service provider and identify any services, beyond the annual audit engagement, that the outside auditor can provide to the corporation consistent with applicable law and regulations and with maintaining independence. In pre-approving services to be provided by the outside auditor, as required by applicable law and regulations, the audit committee should decide whether to adopt a pre-approval policy or approve services on an engagement-by-engagement basis. (p. 18)	*Not covered directly, but see* Topic Heading IV.K, *above*.	Audit committees should consider rotating audit firms when there is a combination of circumstances that could call into question the audit firm's independence from management. . . . Alternatively, the Commission suggests that the audit committees of public companies allow the current auditor as well as other qualified firms to submit proposals in the review process for an audit engagement. . . . Even if the company's previous auditor is selected, the bidding process would emphasize the point to external auditors that they report to the audit committee, rather than management. (Part 3, Principle IV) Public accounting firms should limit their services to their clients to performing audits and to providing closely related services that do not put the auditor in an advocacy position, such as novel and debatable tax strategies and products that involve income tax shelters and extensive off-shore partnerships or affiliates. . . . The Commission does not believe that there is a conflict of interest in a public accounting firm providing certain income tax and other services, such as preparing tax returns for corporations, provided that these services do not place the auditor in the role of acting as advocate for the company. (Part 3, Principle VI)	An annual audit should be conducted by an independent, competent and qualified auditor in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects. (Principle V.C) The board should fulfill certain key functions, including . . . [e]nsuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit . . . . (Principle VI.D.7) [T[he IOSCO Principles of Auditor Independence and the Role of Corporate Governance in Monitoring an Auditor's Independence states that, "standards of auditor independence should establish a framework of principles, supported by a combination of prohibitions, restrictions, other policies and procedures and disclosures, that addresses at least the following threats to independence: self-interest, self-review, advocacy, familiarity and intimidation." The audit committee or an equivalent body . . . should . . . be charged with overseeing the overall relationship with the external auditor . . . . (Annotation to Principle V.C) *See* Annotation to Principle V.C (A number of countries are tightening audit oversight through an independent entity . . . acting in the public interest [that] provides oversight over the quality and implementation, and ethical standards used in the jurisdiction . . .). *See also* Topic Heading X.E, *below*.

[32] The Sarbanes-Oxley Act directs the SEC to require that the audit committee of a listed company be responsible for appointing and compensating the company's independent auditor. In addition, the audit committee must approve all audit services, and the independent auditor is prohibited from providing any nonaudit services (to the extent nonaudit services may permissibly be provided by an independent auditor) without prior approval of the audit committee. *See* Appendix.

IV.L. Auditor Independence				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Auditors should provide independent assurance and attestation to the quality of financial statements to instill confidence in the providers of capital. (III.B.4.3) Auditors should bring integrity, independence, objectivity, and professional competence to the financial reporting process. (III.B.4.5) To ensure the integrity of audited financial statements, the corporation's interaction with the external auditor should be overseen by the audit committee on behalf of shareowners. (III.B.4.10) Non-audit, consulting services can impair the objectivity of the auditor. The board, through its independent Audit Committee, should ensure that excessive non-audit fees are prohibited. The Audit Committee should explain why individual non-audit service engagements were provided by the company's independent auditor rather than by another party and how the auditor's independence is safeguarded. To limit the risk of possible conflicts of interest and independence …, non-audit services and [related] fees paid to auditors … should . . . be approved in advance by the Audit Committee. (III.B.4.7) The Audit Committee should assess the independence of the external auditing firm on an annual basis. Prior to acceptance of an external auditor engagement, the Audit Committee should require written disclosure from the external auditor of: a. all relationships [that may impact independence] between the [audit] firm or any affiliates … and the potential audit clients or persons in a financial reporting oversight role; b. the potential effects of these relationships on the independence … of the … accounting firm; c. the substance of the registered accounting firm's discussion with the audit committee. (III.B.4.8) [A]uditors should provide 3 prior years of activities, relationships, and services (including tax services) with the company, [its] affiliates … and persons in financial reporting oversight roles that may impact the independence of the audit firm. (III.B.4.13) Audit committees should promote rotation of the auditor to ensure a fresh perspective and review of the financial reporting framework. (III.B.4.14)	The audit committee should fully exercise its authority to hire, compensate, oversee and, if necessary, terminate the company's independent auditor . . . Even in the absence of egregious reasons, the committee should consider the appropriateness of periodically changing the auditor, bearing in mind factors that include, but are not limited to: • the auditor's tenure as independent auditor of the company • the presence of former audit partners, managers or senior officers . . . at the company . . . • directors' relationships with the auditor . . . • the proportion of total fees attributable to non-audit services . . . • the completeness, timeliness and clarity of the annual letter to the audit committee discussing the independence of the auditor • the significance of the audit and total fees to the lead office and engagement partner . . . • the quality and frequency of communication from the auditor to the audit committee . . . • the experience, expertise and professional skepticism of the audit partner . . . • the incidence and circumstances surrounding a financial restatement . . . • the incidence and circumstances surrounding . . . a material weakness . . . (§ 2.13a) The audit committee should seek competitive bids for the external audit engagement at least every five years. (§ 2.13b) A company's external auditor should not perform any non-audit services for the company, except those, such as attest services, that are required by statute or regulation to be performed by a company's external auditor. (§ 2.13c) The audit committee should publicly provide to shareowners a plain-English explanation of the reasons for a change in the company's external auditors. (§ 2.13g) *See* Topic Heading X.E, *below*.	[The Audit Committee] has sole authority to hire and fire the corporation's independent auditors and to set and approve their compensation. (p. 19) [T]hrough the Audit Committee, [the board should] engage directly in the selection and oversight of the corporation's external audit firm. (p. 17) *See* Topic Heading X.E, *below*.	[T]he voting fiduciary may wish to withhold votes from members of the audit committee if the company's outside audit firm received more than half its fees from non-audit services. (Guideline IV.A.1.7) The trustees believe that auditor independence is essential for the rendering of objective opinions on which investors can rely. Further, the trustees believe that a company's engagement of its audit firm to perform non-audit services (audit-related, tax and all other services) may compromise the independence of the audit firm, or give rise to questions and concerns about the integrity and reliability of the auditor's work. . . . Real and perceived auditor conflicts are most serious when non-audit services constitute a significant percentage of the total fees paid by the company to the auditor, or when the nature of these non-audit services places the auditor in the role of advocate for the company or its executives (e.g. advising the company or its executives on tax avoidance strategies or executive compensation). The trustees also believe that an audit firm's independence can be compromised when the company has employed the same audit firm for a substantial period of time. . . . The trustees prefer that companies only engage their auditors to perform audit services. The trustees acknowledge, however, that the performance of certain non-audit services—audit-related services and routine tax services that do not involve advocacy—do not necessarily compromise the independence of the audit process… Potential and real threats to the independence of the audit process are presented when the fees for permitted non-audit services are a significant portion of the total fees received by the audit firm. (Guideline IV.B) The voting fiduciary should support shareholder proposals to enhance auditor independence…for example, shareholder proposals to limit or prohibit non-audit services, or to require audit firm rotation. (Guideline IV.B.2) *See generally* Guideline IV.B, Auditors. *See also* Topic Heading X.E, *below*.	<u>Proxy Voting Guidelines</u> Vote CASE-BY-CASE on shareholder proposals asking companies to prohibit or limit their auditors from engaging in non-audit services. (p. 8) Vote CASE-BY-CASE on shareholder proposals asking for audit firm rotation, taking into account: • The tenure of the audit firm; • The length of rotation . . . ; • Any significant audit-related issues . . . ; • The number of Audit Committee meetings held each year; • The number of financial experts serving on the committee; and • Whether the company has a periodic renewal process where the auditor is evaluated for both audit quality and competitive price. (p. 9) Generally, vote AGAINST or WITHHOLD from the members of the Audit Committee if: • The non-audit fees paid to the auditor are excessive… ; • The company receives an adverse opinion on the company's financial statements . . . ; or • There is persuasive evidence that the audit committee entered into an inappropriate indemnification agreement with its auditor that limits the ability of the company, or its shareholders, to pursue legitimate legal recourse against the audit firm. (p. 11) <u>QuickScore</u> Non-Audit fees represent what percentage of total fees? The practice of auditors providing non-audit services to companies can prove problematic. While large auditors may have effective internal barriers to ensure that there are no conflicts of interest, an auditor's ability to remain objective is questionable when fees paid to the auditor for non-audit services, such as management consulting and special situation audits, exceed the standard annual audit fees. While some compensation for non-audit services is customary, the importance of maintaining the independence of the auditor is paramount, and an ideal gauge for that is the portion non-audit fees comprise of total audit fees. (Question 1) *See* Topic Heading X.E, *below*.

KEY AGREED PRINCIPLES

V. INDEPENDENT BOARD LEADERSHIP

Governance structures and practices should be designed to provide some form of leadership for the board distinct from management.

The board provides oversight of management and holds it accountable for performance. This requires that the board function as a body distinct from management, capable of objective judgment regarding management's performance. Therefore, some form of independent leadership is required, either in the form of an independent chairman or a designated lead or presiding director. (Rotation of the leadership position among directors or committee chairs on a per-meeting or quarterly basis is not favored because it does not promote accountability for the independent leadership role.) Boards should evaluate the independent leadership of the board annually.

The decision as to the form of independent leadership should be made by the independent directors. If the independent directors determine that it is in the best interests of the company to have independent board leadership in the form of an independent lead director, with the CEO or other non-independent director serving as the board chair, the independent directors should explain why that form of leadership is preferable and also provide the independent lead director with authority for setting the board agenda, determining the board's information needs, and convening and leading regular executive sessions without the CEO or other members of management present.

V.A. Separation of Chairman & CEO[33]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered.	Boards of American corporations have taken a variety of approaches to board leadership, with some boards combining the positions of CEO and chairman and others appointing a separate chairman. No one leadership structure is right for every corporation at all times, and boards of different corporations may reach different conclusions about the leadership structures that are most appropriate for their corporations at any particular point in time. Nevertheless, there is a recognition of the importance of independent board leadership. The board should evaluate whether to separate the positions of CEO and chairman of the board or combine them, based on the board's assessment of what is in the best interests of the corporation and its shareholders considering the corporation's particular circumstances at any given time. Then, on an annual basis, and in connection with the CEO succession planning process, the board should consider the appropriate board leadership structure. Whatever leadership structure a board chooses, independent board leadership is critical to effective corporate governance. (p. 15) *See* Topic Heading V.B, *below*.	The roles of a non-executive chairman or board leader have been under consideration for some years. The independent board leader concept continues to grow in acceptance, according to current surveys. The purpose of creating these positions is not to add another layer of power but instead to ensure organization of, and accountability for, the thoughtful execution of certain critical independent director functions. The board should ensure that someone is charged with: organizing the board's evaluation of the CEO and providing continuous ongoing feedback; chairing executive sessions of the board; setting the agenda with the CEO; and leading the board in anticipating and responding to crises. . . . Boards should consider formally designating a nonexecutive chairman or other independent board leader. If they do not make such a designation, they should designate, regardless of title, independent members to lead the board in its most critical functions . . . . (pp. 3-4) *See* Topic Heading V.B, *below*.	Each board of directors should establish a structure, based on its particular circumstances, that provides an appropriate balance between the powers of the CEO and those of the independent directors, enables it to carry out its oversight function, and gives the independent directors, in particular, the powers they require to perform their oversight roles. (Part 2: Principle I) The Commission notes three principal approaches to provide the appropriate balance between board and CEO functions: a. Each corporation should give careful consideration to separating the offices of Chairman of the Board and CEO, with those two roles being performed by separate individuals. The Chairman would be one of the independent directors . . . . b. Where the chairman is not one of the independent directors, a Lead Independent Director position, or other equivalent designation, should be established . . . . c. Where boards do not choose to separate the Chairman and CEO position, or when they are in transition to a structure where the positions will be separated, a Presiding Director position should be established. (Part 2: Principle I, Best Practice 1) *See* Topic Heading V.B, *below*.	In a number of countries with single-tier board systems, the objectivity of the board and its independence from management may be strengthened by the separation of the role of chief executive and chairman, or, if these roles are combined, by designating a lead nonexecutive director to convene or chair sessions of the outside directors. Separation of the two posts may be regarded as good practice, as it can help to achieve an appropriate balance of power, increase accountability and improve the board's capacity for decision making independent of management. (Annotation to Principle VI.E) *See* Topic Heading V.B, *below*.

[33] On December 16, 2009, the SEC amended its rules to require disclosure of board leadership structure, such as whether the same person serves as CEO and chairman of the board, or whether two individuals serve in those positions, and why the company has determined that its leadership structure is appropriate given the company's specific characteristics and circumstances. *See* 2011 ABA Guidebook at 46 ("In many U.S. public companies, the CEO of the corporation also serves as chair of the board. A growing number of public companies have chosen to separate the two functions with the chair position held by an independent director who provides leadership to the board, often serving as a liaison between the board and the CEO, and sometimes serving as a mentor to the CEO."); 2013 Spencer Stuart Board Index at 21 (45% or 221 companies of the S&P 500 split the CEO and chair roles between two people, a slight increase from 43% in 2012 and 39% in 2008. 25% of boards have an independent chair, compared with 16% five years ago. 19% of boards are led by the former CEO (a non-executive) or an executive director other than the CEO). 4% of S&P 500 companies report having a formal policy requiring the separation of the CEO and chair roles; the majority of other companies decide on a case-by-case basis. While the number of companies with a formal non-executive policy is small, only 6 companies (1%) had these policies in 2010); 2013 NACD Survey at 12 (54.4% of respondents reported having separate roles for the CEO and board chair. This includes 31.7% which have the chairman as an independent director; 13.4% which have the chairman as an executive director/insider (other than the CEO); 6.8% which have the chairman as a former CEO of the company; and 2.6% which have a chairman as a non-independent non-executive director. 2.4% of respondents reported having no chairman).

V.A. Separation of Chairman & CEO				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
The board should be chaired by an independent director. The CEO and chair roles should only be combined in very limited circumstances; in these situations, the board should provide a written statement in the proxy materials discussing why the combined role is in the best interest of shareowners, and it should name a lead independent director to fulfill duties that are consistent with those provided in Appendix C [(Independent Chair/Lead-Director Position Duty Statement)]. (III.B.1.4) When selecting a new chief executive officer, boards should re-examine the traditional combination of the "chief executive" and "chair" positions. (III.B.1.5) *See* Appendix C, Independent Chair/Lead-Director Position Duty Statement. *See also* Topic Heading V.B, *below*.	The board should be chaired by an independent director. The CEO and chair roles should only be combined in very limited circumstances; in these situations, the board should provide a written statement in the proxy materials discussing why the combined role is in the best interests of shareowners, and it should name a lead independent director . . . . (§ 2.4) *See* Topic Heading V.B, *below*.	In recent years public confidence in board independence has been undermined by an array of scandals, fraud, accounting restatements, options backdating, abuses in CEO compensation, perquisites and special privileges. These issues have highlighted the need for boards to be (and to be perceived as) fully independent, cost conscious, free of conflicts, protective of shareholder interests and capable of objectivity, toughness and independence in their oversight of executive management. In order to ensure independent oversight, TIAA- CREF believes that the separation of CEO and chair or appointment of a lead independent director is appropriate. In addition to disclosing why a specific structure has been selected, when the CEO and chair roles are combined, a company should disclose how the lead independent director's role is structured to ensure they provide an appropriate counter balance to the CEO/chair. (p. 18) *See* Topic Heading V.B, *below*.	[T]he trustees believe that having an independent director serve as chairperson enhances the board's independence and effectiveness. (Guideline IV.A) The voting fiduciary should support shareholder proposals seeking to require that an independent director who has not served as an executive at the company shall serve as chair of the board of directors. The primary purpose of the board of directors is to protect shareholders' interests by providing independent oversight of management including the CEO. The board chair's duty to oversee management is compromised when the positions of board chair and CEO are combined, and the trustees fear that such an arrangement may give the CEO undue power to determine corporate policy. Having an independent director serve as board chair promotes the independent leadership of the board and a more objective evaluation of management. However, in certain circumstances, such as when the company's founder retains a substantial equity stake while serving as board chair and CEO, it may be appropriate for these positions to be combined for some period of time. (Guideline IV.A.8) *See* Topic Heading V.B, *below*.	Proxy Voting Guidelines Generally vote FOR shareholder proposals requiring that the chairman's position be filled by an independent director, unless the company . . . maintains the following counterbalancing governance structure: • Designated lead director . . . . (pp. 19-20) QuickScore What is the classification of the Chairman of the Board? An independent Chairman of the Board is broadly considered best practice. As noted in a 2009 policy brief published by Yale University's Millstein Center for Corporate Governance and Performance, the "independent chair curbs conflicts of interest, promotes oversight of risk, manages the relationship between the board and CEO, serves as a conduit for regular communication with shareowners, and is a logical next step in the development of an independent board." (Question 14) *See* Topic Heading V.B, *below*.

V.B. "Presiding" or Lead Director[34]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered.	To provide independent leadership for the board, the board should appoint a lead director if it combines the positions of CEO and chairman or has a chairman who is not independent. The lead director should be appointed by the independent members of the board and should serve for a period of at least one year. At some corporations the lead director is appointed annually, while at others the lead director serves for a longer term or an indefinite period of time. Lead directors perform a range of functions, depending on the needs of the board. One of the primary functions of the lead director is chairing executive sessions of a board's independent or non-management directors. The lead director should have the authority to call executive sessions, and should coordinate and oversee appropriate follow-up on matters discussed in executive sessions to maximize the effectiveness of these sessions. Other key functions of the lead director include chairing board meetings in the absence of the chairman of the board, reviewing and/or approving agendas and schedules for board meetings and information sent to the board, and being available for engagement with long-term shareholders as appropriate. The lead director also may play a key role in overseeing performance evaluations of the CEO and the board, and leading the board in crisis situations. Depending on the responsibilities associated with the position of the lead director or independent chairman, the position may involve substantial responsibility and require a significant time commitment on the part of a director. (pp. 15-16) *See* Topic Heading V.A, *above.*	The roles of a non-executive chairman or board leader have been under consideration for some years. The independent board leader concept continues to grow in acceptance, according to current surveys. The purpose of creating these positions is not to add another layer of power but instead to ensure organization of, and accountability for, the thoughtful execution of certain critical independent director functions. The board should ensure that someone is charged with: organizing the board's evaluation of the CEO and providing continuous ongoing feedback; chairing executive sessions of the board; setting the agenda with the CEO; and leading the board in anticipating and responding to crises. . . . Boards should consider formally designating a nonexecutive chairman or other independent board leader. If they do not make such a designation, they should designate, regardless of title, independent members to lead the board in its most critical functions, including: agenda setting with the CEO; CEO and board evaluation; executive sessions; and anticipating or responding to crises . . . A designated director or directors should work with the CEO to create board agendas (incorporating other board members' input as provided) and to ensure that all relevant materials are provided in a timely manner prior to each meeting. (pp. 3-4) *See* Topic Heading V.A, *above.*	[When Chairman and CEO roles are separate but the Chairman is nevertheless not an independent director within the meaning of stock exchange requirements, there should be a] Lead Independent Director (or equivalent designee) [whose duties] should, at a minimum, include: chairing meetings of the nonmanagement directors; serving as the principal liaison to the independent directors; and working with the non-CEO Chairman to finalize information flow to the board, meeting agendas, and meeting schedules. (Part 2, Principle I, Best Practice 2.b) [When Chairman and CEO roles are joined, there should be a] Presiding Director [whose duties] should, at a minimum, include: presiding at board meetings in the absence of the Chairman; presiding at executive sessions of the nonmanagement directors; serving as the principal liaison to the independent directors; having ultimate approval over information sent to the board; having ultimate approval over the board meeting agenda; and setting meeting schedules to assure that the directors have sufficient time for discussion of all agenda items. (Part 2, Principle I, Best Practice 2.c) *See* Topic Heading V.A, *above*.	In a number of countries with single tier board systems, the objectivity of the board and its independence from management may be strengthened by the separation of the role of chief executive and chairman, or, if these roles are combined, by designating a lead nonexecutive director to convene or chair sessions of the outside directors. . . . The designation of a lead director is . . . regarded as a good practice alternative in some jurisdictions. Such mechanisms can also help to ensure high quality governance of the enterprise and the effective functioning of the board. (Annotation to Principle VI.E) *See also* Topic Heading V.A, *above.*

[34] On December 16, 2009, the SEC amended its rules to require companies with a combined CEO/chair to disclose whether the company has a lead independent director and what specific role the lead independent director plays in the leadership of the board. Under NYSE listing rules, domestic listed companies are required to disclose either the name of the director who will preside at executive sessions of the non-management directors (the "presiding" director) or, alternatively, the procedure by which a director will be selected to preside at each session. There is no comparable requirement for Nasdaq-listed companies. *See* Appendix. *See* 2011 ABA Guidebook at 46 ("Where the CEO or another non-independent director serves as board chair, the independent directors often formally designate an independent director to act as a presiding or lead director. The chair of the nominating/corporate governance committee or a senior director often acts in that capacity."); 2013 Spencer Stuart Board Index at 23 (90% of all S&P 500 companies (446) have reported a lead or presiding director. Of these 446 companies, 61% have lead directors and 39% have presiding directors, including those identified as "chair" of executive sessions. In 2004, 85% of boards reported having a lead or presiding director. Among those boards, 28% had designated a lead director and 72% had a presiding director.); 1994 NACD Report at 4 (discussing board appointment of a lead director for the CEO evaluation process); 2013 NACD Survey at 13 (75.1% of respondents' boards have a designated lead director.).

V.B. “Presiding” or Lead Director				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
The [lead director] is responsible for coordinating the activities of the board of directors including, but not limited to, those duties as follows: • Coordinate the scheduling of board meetings and preparation of agenda material for board meetings and executive sessions . . . . • Lead board meetings in addition to executive sessions . . . . • Define the scope, quality, quantity and timeliness of the flow of information between company management and the board that is necessary for the board to effectively and responsibly perform their duties. • Oversee the process of hiring, firing, evaluating, and compensating the CEO. • Approve the retention of consultants who report directly to the board. • Advise the independent board committee chairs in fulfilling their designated roles and responsibilities to the board. • Interview, along with the chair of the nominating committee, all board candidates, and make recommendations to the nominating committee and the board. • Assist the board and company officers in assuring compliance with and implementation of the company’s Governance Principles. • Act as principal liaison between the independent directors and the CEO on sensitive issues. • Coordinate performance evaluations of the CEO, the board, and individual directors. • Recommend to the full board the membership of the various board committees, as well as selection of the committee chairs. • Be available for communication with shareowners. (Appendix C) *See* Topic Heading V.A, *above.*	[In the very limited circumstances where the CEO and chair roles are combined,] the board should . . . name a lead independent director who should have approval over information flow to the board, meeting agendas and meeting schedules to ensure a structure that provides an appropriate balance between the powers of the CEO and those of the independent directors. Other roles of the lead independent director should include chairing meetings of non-management directors and of independent directors, presiding over board meetings in the absence of the chair, serving as the principle liaison between the independent directors and the chair and leading the board/director evaluation process. Given these additional responsibilities, the lead independent director should expect to devote a greater amount of time to board service than the other directors. (§ 2.4) *See* Topic Heading V.A, *above.*	In order to ensure independent oversight, TIAA-CREF believes that the separation of CEO and chair or appointment of a lead independent director is appropriate. (p. 18) TIAA-CREF will generally not support shareholder resolutions asking that the roles of Chairman and CEO be separated. However we may support such resolutions where we believe that there is not a bona-fide lead independent director and the company’s corporate governance practices or business performance are materially deficient. (p. 31) *See* Topic Heading V.A, *above.*	At companies that have not adopted an independent board chairperson, the voting fiduciary should support the establishment of a lead independent director. In addition to serving as the presiding director at meetings of the board’s independent directors, a lead director is responsible for coordinating the activities of the independent directors. At a minimum, a lead independent director helps to set the schedule and agenda for Board meetings, monitors the quality, quantity and timeliness of the flow of information from management, and has the ability to hire independent consultants necessary for the independent directors to effectively and responsibly perform their duties. (Guideline IV.A.9) *See* Topic Heading V.A, *above.*	<u>Proxy Voting Guidelines</u> Generally vote FOR shareholder proposals requiring that the chairman’s position be filled by an independent director, unless the company[, among other things, has a d]esignated lead director, elected by and from the independent board members with clearly delineated and comprehensive duties. (The role may alternatively reside with a presiding director, vice chairman, or rotating lead director; however the director must serve a minimum of one year in order to qualify as a lead director.) The duties should include, but are not limited to, the following: • presides at all meetings of the board at which the chairman is not present, including executive sessions of the independent directors; • serves as liaison between the chairman and the independent directors; • approves information sent to the board; • approves meeting agendas for the board; • approves meeting schedules to assure that there is sufficient time for discussion of all agenda items; • has the authority to call meetings of the independent directors; • if requested by major shareholders, ensures that he is available for consultation and direct communication. (pp. 19-20) <u>QuickScore</u> Has the company identified a Senior Independent Director? A lead independent director provides an important leadership function for a board with a combined CEO/chair structure. An effective lead director’s functions may include, but are not limited to, the following: presides at all meetings of the board at which the chairman is not present, including executive sessions of the independent directors; serves as liaison between the chairman and the independent directors; approves information sent to the board; approves meeting agendas for the board; approves meeting schedules to assure that there is sufficient time for discussion of all agenda [i]tems; has the authority to call meetings of the independent directors; and if requested by major shareholders, ensures that he is available for consultation and direct communication. (Question 16) *See* Topic Heading V.A, *above.*

KEY AGREED PRINCIPLES

VI. ETHICS, INTEGRITY & RESPONSIBILITY

Governance structures and practices should be designed to promote an appropriate corporate culture of integrity, ethics, and corporate social responsibility.

The tone of the corporate culture is a key determinant of corporate success. Integrity, ethics, and a sense of the corporation's role and responsibility in society are foundations upon which long-term relationships are built with customers, suppliers, employees, regulators, and investors. The board plays a key role in assuring that an appropriate corporate culture is developed, by communicating to senior management the seriousness with which the board views the matter, defining the parameters of the desired culture, reviewing efforts of management to inculcate the agreed culture (including but not limited to review of compliance and ethics programs) and continually assessing the integrity and ethics of senior management.

Assessment of management performance and integrity are at the heart of effective governance, and should factor into all board decisions—not only in hiring and compensation matters. In particular, boards should assess management integrity and ethics when considering management proposals; assessing internal controls and procedures; reviewing financial reporting and accounting decisions; and more generally, when discussing management development and succession planning. The board should pay special attention to how members of senior management approach their own conflicts of interest, for example, in addition to any proposed related-person transactions involving management, the conflicts inherent in compensation decisions and the use of corporate assets in the form of perquisites.

VI.A. Conflicts of Interest, Ethics & Confidentiality[35]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
A director, senior executive, or controlling shareholder makes "disclosure concerning a conflict of interest" if the director, senior executive, or controlling shareholder discloses to the corporate decisionmaker who authorizes in advance or ratifies the transaction in question the material facts known to the director, senior executive, or controlling shareholder concerning the conflict of interest, or if the corporate decisionmaker knows of those facts at the time the transaction is authorized or ratified. (§ 1.14(a)) [T]he corporation, in the conduct of its business . . . [i]s obliged, to the same extent as a natural person, to act within the boundaries set by law . . . ; (§ 2.01(b)(1)) See § 3.04, Comment c ([W]here directors of either a publicly or non-publicly held corporation are reviewing a conflict-of-interest transaction, it might be appropriate to recognize a right to expert assistance . . . in the subset of directors who are disinterested . . . .). *See generally* Part V, Duty of Fair Dealing. *See also* Topic Heading VII.E, *below*.	Directors and management should never put personal interests ahead of or in conflict with the interests of the corporation. (p. 2) Effective corporate governance requires . . . the CEO and senior management . . . [to] be committed to business success through the maintenance of the highest standards of responsibility and ethics. (p. 5) The board should set a "tone at the top" that establishes the corporation's commitment to integrity and legal compliance. . . . The board should pay particular attention to conflicts of interest, including related-person transactions. (p. 10) It is the responsibility of the CEO and management, under the CEO's direction, to operate the corporation in an effective and ethical manner. (p. 10) Business Roundtable believes that . . . corporations should have: • A CEO of integrity . . . who takes responsibility for the corporation adhering to the highest ethical standards. • A strong, ethical "tone at the top" [set by the CEO and senior management] that establishes a culture of legal compliance and integrity communicated to personnel at all levels of the corporation. • An effective compliance program. (p. 12) *See* pp. 19-20 (The audit committee should report at least annually to the full board on its oversight of the compliance program. … The audit committee should consider whether to hold private sessions ... with … those responsible for compliance (including at least one meeting annually with the person who has day-to-day responsibility for the compliance program).)	Boards should seek only candidates who have demonstrated high ethical standards and integrity in their personal and professional dealings, and who are willing to act on–and remain accountable for–their boardroom decisions. (p. 7) Boards should require that director candidates disclose all existing business relationships between them or their employer and the board's company. Boards should then evaluate the extent to which, if any, a candidate's other activities may impinge on his or her independence as a board member, and determine when relationships are such that a candidate can no longer be considered independent. (p 10.) If, through the evaluation process or otherwise, it becomes apparent that a director is not meeting the standards established by the board (including ethical standards), where appropriate the governance committee should provide the director with feedback, additional education, or other reasonable means of guidance. If such attempts are either inappropriate or unsuccessful, the director's resignation should be accepted. (p. 18) [T]he board should . . . seek disclosure of any relationships that would appear to compromise director independence. (p. 20) Board disclosure of procedures is distinct from sharing the substance of such deliberations, which should be confidential. (p. 16) *See also* NACD, CORPORATE DIRECTOR'S ETHICS AND COMPLIANCE HANDBOOK (2003).	The Compensation Committee should . . . recognize the potential conflict of interest in management's recommending its own compensation levels. (Part 1, Principle I) No compensation arrangement should be permitted that creates an incentive for top executives to act contrary to the company's best interests . . . . (Part 1, Principle I, Best Practice 4) Boards must be composed of . . . a substantial majority . . . free from disqualifying conflicts of interest . . . (Part 2, Introduction at p. 9) Each director should disclose to the board or to a designated committee all relationships between and among that director, the company, and senior management of the company, including any potential conflict of interest, whether or not required for public disclosure, in order to allow for a comprehensive determination of a director's independence. (Part 2, Principle II, Best Practice 4) [E]thical standards and the skills required to foster ethical practice throughout the organization should be among the core qualifications for the CEO and other senior management positions. (Part 2, Principle VI) Among the practices which boards should consider for establishing an ethical corporate culture are: . . . • continued and repeated emphasis, and commensurate behavior, by the board and CEO, on the importance of ethical conduct to the corporation and its business; and • using, as criteria for selection of the CEO and senior management, a candidate's ability to and prior history of fostering ethical practices, including the candidate's demonstrated business values and response to any misconduct in prior organizations in which the candidate was employed. (Part 2, Principle VI, Best Practice 1)	Insider trading and abusive self-dealing should be prohibited. (Principle III.B) Members of the board and key executives should be required to disclose to the board whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the corporation. (Principle III.C) Stakeholders, including individual employees and their representatives, should be able to freely communicate their concerns about illegal or unethical practices to the board and their rights should not be compromised for doing this. (Principle IV.E) The board should fulfill certain key functions including . . . [m]onitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions. (Principle VI.D) Boards should consider assigning a sufficient number of nonexecutive board members capable of exercising independent judgment to tasks where there is a potential for conflict of interest. (Principle VI.E.1) *See* Annotation to Principle III.B *(Abusive self-dealing, e.g., by controlling shareholders, and insider trading, are prohibited in most, but not all, OECD jurisdictions; such practices violate the principle of equitable treatment of shareholders.).* *See also* Principle II.F.2 *(Institutional investors acting in a fiduciary capacity should disclose how they manage material conflicts of interest . . .).*

[35] Under NYSE listing rules, domestic listed companies are required to adopt and disclose a code of business conduct and ethics for directors, officers and employees addressing: conflicts of interest; corporate opportunities; confidentiality; fair dealing with customers, suppliers, competitors and employees; protection and proper use of company assets; compliance with laws, rules and regulations (including insider trading laws); and encouraging the reporting of any illegal or unethical behavior. Any waivers of the code given to directors or executive officers must be approved by the board or a board committee, and must be disclosed within 4 business days. Nasdaq-listed companies are required to adopt a code of business conduct and ethics for directors, officers and employees that, at a minimum would qualify as a code of ethics under the Sarbanes-Oxley Act. In addition, under the Sarbanes-Oxley Act and related SEC rules, companies must disclose whether or not they have adopted a code of ethics applicable to their CEO, CFO and certain other officers and, if not, why not. The Sarbanes-Oxley Act also provides "whistleblower" protections, which have been expanded by the Dodd-Frank Act. *See* Appendix. *See* 2011 ABA Guidebook at 24 ("Directors should be alert and sensitive to any interest they may have that might conflict with the best interests of the corporation, and they should disclose such interests to the designated board representative or committee and the general counsel. When directors have a direct or indirect financial or personal interest in a matter before the board for decision — including a contract or transaction to which the corporation is to be a party, or which involves the use of corporate assets, or which may involve competition with the corporation — they are considered "interested" in the matter. Interested directors should disclose the interest to the board members who are to act on the matter and disclose the relevant facts concerning it.").

VI.A. Conflicts of Interest, Ethics & Confidentiality				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Independence . . . requires a lack of conflict between the director's personal, financial, or professional interests, and the interests of shareowners… (III.B.1)	The Council believes every company should have . . . an ethics code that applies to all employees and directors, and provisions for its strict enforcement. (§ 1.3)	Any monetary arrangements between the company and directors outside normal board activities should be approved by the board and disclosed to shareholders. Such monetary arrangements are generally discouraged, as they may compromise a director's independence. (p. 15) [T]he board should: (i) be a model of integrity and inspire a culture of responsible behavior and high ethical standards; (ii) ensure that corporate resources are used only for appropriate business purposes; (iii) mandate strong internal controls, avoid conflicts of interest, promote fiscal accountability and ensure compliance with applicable laws and regulations; (iv) implement procedures to ensure that the board is promptly informed of any violations of corporate standards; . . . and (vi) develop, disclose and enforce a clear and meaningful set of corporate governance principles. (p.17) TIAA-CREF . . . will consider withholding or voting against some or all directors …[w]hen we conclude that (i) the actions of directors are unlawful, unethical, negligent, or do not meet fiduciary standards of care and loyalty, or are otherwise not in the best interest of shareholders. Such actions would include: issuance of backdated or spring loaded options, excessively dilutive equity grants, egregious compensation practices, unequal treatment of shareholders, adoption of inappropriate antitakeover devices, and unjustified dismissal of auditors….(ii) [w]hen directors have failed to disclose, resolve or eliminate conflicts of interest that affect their decisions. (pp. 29-30) *See* p. 9 (Shareholders should have the right to expect that each director (including directors who are affiliated with either the company or a particular shareholder) is acting in the interest of all shareholders and not that of a particular constituent, special interest group or dominant shareholder.).	Effective boards must exercise independent judgment, and this fundamental duty can be compromised by director conflicts of interest. To mitigate these concerns, the trustees believe that at least two-thirds of a corporation's directors should be independent . . . . (Guideline IV.A.1.1) Independence is critical for directors to carry out their duties to select, monitor and compensate management, and the voting fiduciary should generally support efforts to enhance board of director independence. This includes, but is not limited to, proposals to require . . . the company to provide expanded disclosure of potential conflicts involving directors. (Guideline IV.A.10) The voting fiduciary should support proposals that ask companies to prepare a report on or adopt a code of conduct on their operations in countries or regions with systemic labor and human rights violations. Taking such actions will help the company protect its corporate reputation and reduce its vulnerability to lawsuits from international human rights abuses. A board level review or report can shed needed light on a controversy and help investors to better understand the risks associated with a company's international operations. Examples of country specific standards that should be supported include the MacBride Principles for Northern Ireland and the Sullivan Principles for South Africa. (Guideline IV.E.3)	Proxy Voting Guidelines *Vote CASE-BY-CASE on proposals relating to significant corporate transactions such as mergers and acquisitions, joint ventures and spinoffs, taking into account conflicts of interest, among other factors.* (pp. 30-37) QuickScore What percent of the directors were involved in material RPTs? Related party transactions can lead to conflicts of interest that may compromise independence, particularly in instances where participation or ties to transactions are not fully disclosed. (Question 50) Has a securities regulator taken enforcement action against a director or officer of the company in the past two fiscal years? (Question 200) Is a director or officer of the company currently under investigation by a regulatory body? Disclosed investigations indicate the potential for controversy that could result in enforcement actions, significant penalties for the issuer and adversely impact the company's reputation and shareholder value. (Question 201) Are there material related-party transactions involving the CEO? The CEO's special role in the company demands special attention to even the appearance of self-dealing. (Question 216)

VI.B. The Role of Stakeholders[36]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Even if corporate profit and shareholder gain are not thereby enhanced, the corporation, in the conduct of its business: (1) Is obliged, to the same extent as a natural person, to act within the boundaries set by law; (2) May take into account ethical considerations that are reasonably regarded as appropriate to the responsible conduct of business; and (3) May devote a reasonable amount of resources to public welfare, humanitarian, educational, and philanthropic purposes. (§ 2.01(b)) [In the context of considering how to respond to unsolicited tender offers,] [t]he board may . . . have regard for interests or groups (other than shareholders) with respect to which the corporation has a legitimate concern if to do so would not significantly disfavor the long-term interests of shareholders. (§ 6.02(b)(2))	[I]t is the responsibility of the corporation to deal with its employees, customers, suppliers and other constituencies in a fair and equitable manner and to exemplify the highest standards of corporate citizenship. (p. 3) Corporations are often said to have obligations to shareholders and other constituencies, including employees, the communities in which they do business, and government, but these obligations are best viewed as part of the paramount duty to optimize long-term shareholder value. Business Roundtable believes that shareholder value is enhanced when a corporation engages effectively with its long-term shareholders, treats its employees well, serves its customers well, fosters good relationships with and appropriately oversees its major suppliers, maintains an effective compliance program and strong corporate governance practices, and has a reputation for civic responsibility. (p. 30) It is in a corporation's best interest to treat employees fairly and equitably. (p. 31) Corporations have obligations to be good citizens of the local, national and international communities in which they do business. Failure to meet these obligations can result in damage to the corporation, both in immediate economic terms and in longer-term reputational value. (p. 32) Corporations have an important perspective to contribute to the public policy dialogue and should be actively involved in discussions about the development, enactment and revision of the laws and regulations that affect their businesses and the communities in which they operate and their employees reside. (p. 32) *See generally* Employees (pp. 31-32), Communities (p. 32) *and* Government (p. 32).	In consultation with the CEO, the board should clearly define its role, considering both its legal responsibilities to shareholders and the needs of other constituencies, provided shareholders are not disadvantaged. (p. 19)	Among the practices which boards should consider for establishing an ethical corporate culture are: • programs to ensure that employees understand, apply, and adhere to the company's code of ethics; • processes that encourage and make it safe for employees to raise ethical issues and report possible ethical violations; • processes for prompt investigation of complaints and prompt disposition, including discipline and corrective action, if necessary; and • processes to measure and track employees' adherence to the company's ethical requirements . . . . (Part 2, Principle VI, Best Practice 2) Among the practices which boards should consider for establishing an ethical corporate culture are . . . ethics-related criteria in employees' annual performance reviews . . . . (Part 2, Principle VI, Best Practice 3) [T]he [Sarbanes-Oxley] Act contains provisions [for] an employee complaint system for accounting and audit matters . . . . (Part 3, Principle II)	The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active cooperation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises. A. The rights of stakeholders that are established by law or through mutual agreements are to be respected. B. Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights. C. Performance-enhancing mechanisms for employee participation should be permitted to develop. D. Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis. E. Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and their rights should not be compromised for doing this. F. The corporate governance framework should be complemented by an effective, efficient insolvency framework and by effective enforcement of creditor rights. (Principle IV) *See* Millstein Report, 1.2.16 (Attending to legitimate social concerns should, in the long run, benefit all parties, including investors.).

[36] *See* 2011 ABA Guidebook at 14 ("A number of state corporation statutes expressly allow the board to consider the interests of employees, suppliers, and customers, as well as the communities in which the corporation operates and the environment. Of course, the board remains accountable primarily to shareholders for the performance of the corporation. Thus, non-shareholder constituency considerations are best understood not as independent corporate objectives but as factors to be considered in pursuing the best interests of the corporation.").

VI.B. The Role of Stakeholders				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
CalPERS believes that boards that strive for active cooperation between corporations and stakeholders will be most likely to create wealth, employment and sustainable economies. . . . Therefore, CalPERS recommends that: 6.1. . . . Corporations adopt maximum progressive practices toward the elimination of human rights violations in all countries or environments in which the company operates . . . . 6.2. . . . To ensure sustainable long-term returns, companies should provide accurate and timely disclosure of environmental risks and opportunities through adoption of policies or objectives, such as those associated with climate change . . . . 6.3. . . . Corporations strive to measure, disclose, and be accountable to internal and external stakeholders for organizational performance towards the goal of sustainable development . . . . 6.4. . . . When considering reincorporation, corporations should analyze shareowner protections, company economic, capital market, macro economic, and corporate governance considerations. 6.5. . . . Robust board oversight and disclosure of corporate charitable and political activity is needed to ensure alignment with business strategy and to protect assets on behalf of shareowners. (III.B.6) *See* Topic Heading II.D, *above.*	The Council believes companies should adhere to responsible business practices and practice good corporate citizenship. Promotion, adoption and effective implementation of guidelines for the responsible conduct of business and business relationships are consistent with the fiduciary responsibility of protecting long-term investment interests. (§ 1.6) *See* Topic Heading II.D, *above.*	As a matter of good corporate governance, boards should carefully consider the strategic impact of environmental and social responsibility on long-term shareholder value. Over the last several years, numerous innovative best practices have emerged within corporations that promote risk management (including reputational risk) and sustainable competitiveness. TIAA-CREF believes that companies and boards should exercise diligence in their consideration of environmental and social issues, analyze the strategic and economic questions they raise and disclose their environmental and social policies and practices. To ensure companies have the best possible information about their relationship with their stakeholders, directors should encourage dialogue between the company and its investors, employees, customers, suppliers and the larger community. We believe that investors should encourage a long-term perspective regarding sustainability and social responsibility, which may impact the long-term performance of both individual companies and the market as a whole. We communicate directly with companies to encourage careful consideration of sustainable practices and disclosure. TIAA-CREF may support reasonable shareholder resolutions on social and environmental topics that raise relevant economic issues for companies. In casting our votes, we consider whether the resolution respects the proper role of shareholders and boards in overseeing company policy, as well as any steps that the company may have taken to address concerns. (p. 25) *See* pp. 25-28, 34-37 *for TIAA-CREF's guidelines relating to environmental and social issues, including global climate change, use of natural resources, impact on ecosystems, global labor standards, diversity and non-discrimination, human rights, global health risks, corporate political influence, animal welfare, product responsibility, predatory lending and tobacco.* *See* Topic Heading II.D, *above*.	In voting on the entire board of directors, the voting fiduciary should consider . . . [t]he views of . . . [i]mportant [c]orporate [c]onstituents, [s]uch [a]s [e]mployees and [c]ommunities. The trustees believe that in order to succeed over the long-term, businesses need to be responsive to important corporate constituents such as their employees and the communities in which they operate. When one of these important corporate constituencies makes its views known, it may indicate significant problems that are likely to affect the corporation's performance, and the voting fiduciary should give these concerns special consideration when evaluating director performance. (Guideline IV.A.1.5) The trustees believe that in order to succeed over the long term, businesses need to treat employees, suppliers and customers well, to be environmentally responsible, and to be responsive to the communities in which they operate. A range of issues relating to how businesses fulfill these goals can be addressed with what are called corporate responsibility, or social issue, shareholder proposals. In general, the fiduciary can support such shareholder proposals if they either contribute to the long-term economic best interests of plan participants and beneficiaries or will have no adverse effect on the long-term economic best interests of plan participants and beneficiaries. (Guideline IV.E) The trustees believe companies should adopt workplace practices covering basic labor and human rights standards. (Guideline IV.E.1) *See generally* Guidelines IV.E, Corporate Responsibility.	<u>Proxy Voting Guidelines</u> Issues covered under the policy include a wide range of topics, including consumer and product safety, environment and energy, labor standards and human rights, workplace and board diversity, and corporate political issues. While a variety of factors goes into each analysis, the overall principle guiding all vote recommendations focuses on how the proposal may enhance or protect shareholder value in either the short term or long term. Generally vote CASE-BY-CASE, taking into consideration whether implementation of the proposal is likely to enhance or protect shareholder value, and in addition the following will also be considered: • If the issues presented in the proposal are more appropriately or effectively dealt with through legislation or government regulation; • If the company has already responded in an appropriate and sufficient manner to the issue(s) raised in the proposal; • Whether the proposal's request is unduly burdensome (scope, timeframe, or cost) or overly prescriptive; • The company's approach compared with any industry standard practices for addressing the issue(s) raised by the proposal; • If the proposal requests increased disclosure or greater transparency, whether or not reasonable and sufficient information is currently available to shareholders from the company or from other publicly available sources; and • If the proposal requests increased disclosure or greater transparency, whether or not implementation would reveal proprietary or confidential information that could place the company at a competitive disadvantage. (p. 56) *See also* pp. 56-67 *in relation to specific types of social and environmental proposals.* <u>QuickScore</u> *Not covered.* *See* Topic Heading II.D, *above*.

KEY AGREED PRINCIPLES

VII. ATTENTION TO INFORMATION, AGENDA & STRATEGY

Governance structures and practices should be designed to support the board in determining its own priorities, resultant agenda, and information needs and to assist the board in focusing on strategy (and associated risks).

In today's dynamic and volatile business and financial environment, a key challenge for boards comprised primarily of outside and independent directors is to develop their own sense of corporate priorities and their own view of the matters that are most important to the success of the company. Boards must develop their own viewpoints to provide management with meaningful strategic guidance and support and to focus their own attention appropriately. Therefore, the board must be actively engaged in determining its own priorities, agenda and information needs.

Directors need significant information about the company's business and its prospects based on an understanding of opportunities, capabilities, strategies, and risks in the competitive environment. While directors must—and should—rely on management for information about the company, they need to recognize that their ability to serve as fiduciaries depends on the degree to which they can bring objective judgment to bear. Therefore, directors cannot be unduly reliant on management for determining the board's priorities and related agenda, and information needs.

For most companies, the priority focus of board attention and time will be understanding and providing guidance on strategy and associated risk—based on the underlying understanding of the company's strengths and weaknesses, and the opportunities and threats posed by the competitive environment—and monitoring senior management's performance in both carrying out the strategy and managing risk. Management performance, corporate strategy, and risk management are the prime underpinnings of the corporation's ability to create long-term value. Directors should strive for a constructive tension in discussions with management about strategy, performance, and the underlying assumptions upon which management proposals are based. Directors should actively participate in defining the benchmarks by which to assess success, and then monitor performance against those benchmarks. They should also establish (and disclose to the extent practical in light of competitive realities) a very real and apparent link between the strategy, benchmarks for success, and compensation.

As emphasized by the Sarbanes-Oxley Act and related SEC regulations and listing standards, the board plays a critical role in oversight of compliance, financial reporting, and internal controls, as well as in organizing the board's own processes. However, these functions should follow naturally from an understanding of the importance of the board's objective judgment in its role as a fiduciary and a primary focus on corporate strategy and performance (within an appropriate framework of integrity and ethics as discussed above). In normal circumstances, compliance, oversight of financial reporting and controls, and governance issues should not demand the majority of board time and therefore should not overwhelm the board's agenda.

Information flow to the board should be sufficient to support understanding of the company's business and the critical issues the company faces, and enable participation in active, informed discussions at board meetings. It should not be so voluminous as to overwhelm. While the board must have access to any information that it wants, generally the board should assert discipline and not overwhelm management with requests for information outside the scope of what management uses to manage. The board and management should work together to define the type and quantity of information that is of most use, and to identify the timeframe in which information should be provided. (It is in the area of agenda and information flow that independent board leadership is particularly necessary.) Crisp reports distributed in advance of meetings should obviate the need for lengthy management presentations in most board and committee meetings, so that maximum time is preserved for discussion.

[T]he board should also strive to communicate with shareholders about corporate priorities.

VII.A. Board Meetings & Agenda[37]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered directly, but see Topic Headings I.A *and* I.B, *above, and* VII.B, *below*.	When arranging a meeting schedule for the board, each corporation should consider the nature and complexity of its operations and transactions, as well as its business and regulatory environment. (p. 25) The board's agenda must be carefully planned, yet flexible enough to accommodate emergencies and unexpected developments. The chairman of the board should work with the lead director (when the corporation has one) in setting the agenda, and should be responsive to individual directors' requests to add items to the agenda and open to suggestions for improvement. It is important that the agenda and meeting schedule permit adequate time for discussion of priority matters and a healthy give-and-take between board members and management. The board should work to foster open, ongoing dialogue between management and members of the board (p. 26) Board agendas should be structured to maximize the use of meeting time for open discussion and deliberation. (p. 26)	Board and committee meetings are the settings in which most of the directors' decisions are made. Therefore, developing the agenda for such meetings is a critical element in determining and reinforcing board independence and effectiveness. Boards should ensure that members are actively involved with their CEO in setting the agendas for full board meetings. A designated director or directors should work with the CEO to create board agendas (incorporating other board members' input as provided) . . . . For committee meetings, committee chairs should work with the CEO and committee members to create agendas (incorporating other board members' input as provided) . . . . (p. 4)	As a matter of right, exercised reasonably, all directors should have the ability to place items on the board agenda [and] be assured that adequate time is allotted for discussion of those items . . . . (Part 2, Principle I, Best Practice 6) The independent non-CEO Chairman's duties . . . include: presiding at board meetings . . . ; having ultimate approval over the board meeting agenda; . . . and setting meeting schedules to ensure that the independent directors have time for discussion of all agenda items…. The duties of the Lead Independent Director (or equivalent designee) . . . include . . . serving as the principal liaison to the independent directors; and working with the non-CEO Chairman to finalize . . . meeting agendas, and meeting schedules. The duties of the Presiding Director . . . include: presiding at board meetings in the absence of the Chairman; . . . serving as the principal liaison to the independent directors; . . . having ultimate approval over the board meeting agenda; and setting meeting schedules to assure that the directors have sufficient time for discussion of all agenda items. (Part 2, Principle I, Best Practices 2.a, b, c)	*Not covered directly, but see* Topic Headings I.B, *above, and* VII.B, *below*.

[37] *See* 2011 ABA Guidebook at 47-48 ("Traditionally, management played a significant role in determining the matters to be presented to and acted on by the board, due to its greater knowledge of the day-to-day operations of the company. For the board to be effective and objective, however, it must control its own agenda. Thus, the trend is toward increasing independent director involvement in determining the board agenda . . . All directors should have the opportunity and feel free to request that an item be included on the agenda. Further, the board should satisfy itself of the overall annual agenda of matters requiring recurring and focused attention, such as the achievement (as well as periodic reexamination and updating) of operational and financial plans, the evaluation of the CEO and other executive management performance, the evaluation of board and committee performance and the adequacy and appropriateness of corporate systems and controls addressing legal compliance, risk management, corporate policy, financial controls, and financial reporting and other disclosures."); 2013 NACD Survey at 17 (The average number of full board meetings in person was 5.4.); 2012 Spencer Stuart Board Index at 26 (On average, S&P 500 company boards met 8.0 times in 2013, compared to 8.3 in 2012. 58% of boards meet between six and nine times a year, and 23% met at least 10 times.).

VII.A. Board Meetings & Agenda				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
The independent chairperson [or lead director should] [c]oordinate the scheduling of board meetings and preparation of agenda material for board meetings and executive sessions of the board's independent or non-management directors. (Appendix C)	[The independent board chair or, if the CEO and board chair positions are combined, the lead independent director] should have approval over information flow to the board, meeting agendas and meeting schedules to ensure a structure that provides an appropriate balance between the powers of the CEO and those of the independent directors. (§ 2.4) Any director should be allowed to place items on the board's agenda. (§ 2.12b)	*Not covered.*	[A] lead independent director helps to set the schedule and agenda for Board meetings . . . . (Guideline IV.A.9)	<u>Proxy Voting Guidelines</u> *Not covered.* <u>QuickScore</u> *Not covered.*

VII.B. Board Information Flow, Materials & Presentations[38]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Every director has the right . . . to inspect and copy all books, records, and documents of every kind, and to inspect the physical properties, of the corporation and of its subsidiaries, domestic or foreign, at any reasonable time, in person or by an attorney or other agent. (§ 3.03(a)) A judicial order to enforce such right should be granted unless the corporation establishes that the information to be obtained by the exercise of the right is not reasonably related to the performance of directorial functions and duties, or that the director or the director's agent is likely to use the information in a manner that would violate the director's fiduciary obligation to the corporation. (§ 3.03(b)(1)) *See* § 3.03, Comment c (The mere fact that a director intends to use information as part of a proxy fight or other effort to unseat management is not in itself an improper motive . . . .).	The [corporate governance] committee should review . . . the corporation's processes for providing information to the board . . . assess the reporting channels through which the board receives information and see that the board obtains appropriately detailed information in a timely fashion. (p. 22) Highlighting changes relevant to recurring agenda items and distributing copies of presentations sufficiently in advance of meetings can facilitate review of materials prior to meetings and increase the time that is available for discussion and constructive dialogue. The board must have accurate, complete information to do its job; the quality of information that the board receives directly affects its ability to perform its oversight function effectively. Directors should receive and review information from a variety of sources, including senior management, board committees, outside experts and the outside auditor . . . industry journals, and analyst and media reports. The board should receive information before . . . meetings with sufficient time to review and reflect on key issues and to request supplemental information as necessary. Corporations should consider ways in which they can use technology, such as board portals, to provide directors access to relevant information on a timely basis. Technology can provide a mechanism for furnishing meeting materials, delivering real-time information about developments that occur between meetings and creating resources with background information and educational tools for directors to access at their convenience. (pp. 26-27)	Board and committee meetings are the settings in which most of the directors' decisions are made. Therefore, developing the agenda for such meetings is a critical element in determining and reinforcing board independence and effectiveness. A designated director or directors should work with the CEO to create board agendas (incorporating other board members' input as provided) and to ensure that all relevant materials are provided in a timely manner prior to each meeting. For committee meetings, committee chairs should work with the CEO and committee members to create agendas (incorporating other board members' input as provided) and to ensure that all relevant materials are provided in a timely manner prior to each meeting. (p. 4)	[I]ndependent directors must have adequate information to make good decisions, the ability to put key questions on the agenda, and adequate time to deal with the central issues they are confronting. (Part 2, Introduction at 9) The independent non-CEO Chairman's duties . . . include . . . having ultimate approval over information sent to the board [and] serving as the principal liaison to the independent directors…. The duties of the Lead Independent Director (or equivalent designee) . . . include . . . serving as the principal liaison to the independent directors; and working with the non-CEO Chairman to finalize information flow to the board . . . . The duties of the Presiding Director . . . include . . . serving as the principal liaison to the independent directors [and] having ultimate approval over information sent to the board . . . . (Part 2, Principle I, Best Practices 2.a, b, c) As a matter of right, exercised reasonably, all directors should have the ability to . . . request such information as they believe necessary to make sound, informed business decisions on a timely basis. (Part 2, Principle I, Best Practice 6)	In order to fulfill their responsibilities, board members should have access to accurate, relevant and timely information. (Principle VI.F) Board members require relevant information on a timely basis in order to support their decision-making. Non-executive board members do not typically have the same access to information as key managers within the company. The contributions of nonexecutive board members to the company can be enhanced by providing access to certain key managers within the company such as, for example, the company secretary and the internal auditor, and recourse to independent external advice at the expense of the company. In order to fulfill their responsibilities, board members should ensure that they obtain accurate, relevant and timely information. (Annotation to Principle VI.F) *See* Principle IV.D (Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.).

[38] *See* 2011 ABA Guidebook at 20 ("When contemplating specific actions, directors should receive the relevant information far enough in advance of the board or committee meeting to be able to study and reflect on the issues. Important, time-sensitive materials that become available between meetings should be promptly distributed to directors. Directors should review carefully the materials supplied. If a director believes that information is insufficient or inaccurate, or is not made available in a timely manner, the director should request that action be delayed until appropriate information is available and can be studied. If expert advice would be needed for a decision, the director should request that the board seek such advice."); *id.* at 51 ("[Board meetings] should balance management presentations with discussion among directors and with management. Appropriate reports and analyses furnished in advance facilitate discussion at the meeting.").

VII.B. Board Information Flow, Materials & Presentations				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
The independent chairperson [or lead director should] [d]efine the scope, quality, quantity and timeliness of the flow of information between company management and the board that is necessary for the board to effectively and responsibly perform their duties. (Appendix C)	[The independent board chair or, if the CEO and board chair positions are combined, the lead independent director] should have approval over information flow to the board . . . . (§ 2.4) Directors should be provided meaningful information in a timely manner prior to board meetings . . . . The board should periodically assess whether directors feel they have sufficient information to make well-informed decisions and reasonable access to management on matters relevant to shareowner value. For ease of implementation, such assessment may be incorporated into existing director surveys. (§ 2.12a)	*Not covered.*	[A] lead independent director . . . monitors the quality, quantity and timeliness of the flow of information from management. . . . (Guideline IV.A.9)	<u>Proxy Voting Guidelines</u> *Not covered.* <u>QuickScore</u> *Not covered.*

VII.C. Management Succession & Development[39]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
The board of directors has five primary functions, [one of which is to] [r]eview succession planning. (§ 3.02, Comment a.1) The primary function of the board of directors is the selection of the chief executive officer . . . In its broader sense, "selection" includes . . . succession planning . . . . (§ 3.02, Comment d, *quoting* BRT, "Corporate Governance and American Competitiveness" (1990), p. 246) The nominating committee may also perform functions . . . assigned to it by a standard of the corporation. Among the functions that might be assigned by such a standard are . . . recommending candidates to fill vacancies in principal senior executive offices, reviewing proposed personnel changes involving such executives . . . and periodically reviewing management succession-plans. (§ 3A.04, Comment e)	The board should oversee the corporation's plans for developing senior management personnel and plan for CEO and senior management succession. . . . The board should review the corporation's succession plans at least annually and periodically review the effectiveness of the senior management development and succession planning process. (p. 8) Long-term planning for CEO and senior management development and succession is one of the board's most important functions. The board, its corporate governance committee or another committee of independent directors should identify and regularly update the qualities and characteristics necessary for an effective CEO. With these principles in mind, the board or committee should periodically monitor and review the development and progression of potential internal candidates against these standards, and see that internal candidates receive the necessary preparation. The board should review the corporation's succession plan at least annually and periodically review the effectiveness of the succession planning process. Emergency succession planning also is critical. Working with the CEO, the board or committee should see that plans are in place for contingencies such as the departure, death or disability of the CEO or other members of senior management to facilitate the transition to both interim and longer-term leadership in the event of an untimely vacancy. (p. 28)	Boards should institute a CEO succession plan and selection process, through an independent committee or overseen by a designated director or directors. (p. 5) *See* REPORT OF THE NACD BLUE RIBBON COMMISSION ON CEO SUCCESSION (2000).	[T]he nominating/governance committee should recommend to the full board of directors . . . candidates for CEO succession. (Part 2, Principle IV, Best Practice 6)	The board should fulfill certain key functions, including . . . overseeing succession planning. (Principle VI.D.3) Independent board members . . . can play an important role in areas where the interests of management, the company and shareholders may diverge, such as . . . succession planning . . . . (Annotation to Principle VI.E)

[39] Under NYSE listing rules, domestic listed companies are required to adopt and disclose corporate governance guidelines that address management succession. There is no comparable requirement for Nasdaq-listed companies. *See* Appendix. *See* 2011 ABA Guidebook at 12-13 ("State corporate statutes emphasize the board's responsibility to make major decisions on behalf of the corporation and to oversee the management of the corporation. Although these statutes do not specifically define board responsibilities, they generally include . . . developing, approving, and implementing succession plans for the CEO and top senior executives…."); *id.* at 103 ("The nominating and governance committee often has the responsibility to recommend to the board a selection process or a successor to the CEO in the event of retirement or termination of service. The committee may also review and approve proposed changes in other senior management positions, with the understanding that the CEO should have considerable discretion in selecting, retaining, and reviewing members of the management team. In order to perform these functions, the committee, or another board committee should, at least annually, review the performance of the CEO and members of senior management. Succession planning is a continuous board activity that is closely related to management development. The board should be aware of, and regularly reassess, how long the current CEO is likely to continue, what developments may cause a change in that expectation (including a shift in strategy, a change in performance, or an emergency or crisis). The board should also consider what might cause the CEO or other senior executive officers to consider leaving the company. Although all of these factors are relevant, succession planning is in fact a continuous process and one that, by definition, rarely results in a hard and fast plan for a specific outcome. As a result, two key components of succession planning are assessing and developing other management talent and considering what steps the CEO and other senior executive officers can take to further develop their own leadership capabilities and those of their direct reports."); 1994 NACD Report at 3, 7 (the CEO's performance objectives should include an evaluation of the CEO's proposed succession plan; and "directors should provide for senior management succession"); 2013 NACD Survey at 8 (Survey respondents chose CEO succession fourth in a list of the highest priorities for their board in 2013); *id.* at 45 (Of the respondents who reported having a CEO succession plan: 74.9% have a plan for the development of internal candidates, 70.4% have plans to replace the CEO in an emergency, 64.7% have a long-term succession plan, outlining a process that begins three to five years before an expected transition, and 30.4% have a plan for the identification of an interim CEO, and 30.4% have a plan that specifies the engagement of an executive search firm to identify external candidates.).

VII.C. Management Succession & Development				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
The board should proactively lead and be accountable for the development, implementation, and continual review of a CEO succession plan. Board members should be required to have a thorough understanding of the characteristics necessary for a CEO to execute on a long-term strategy that optimizes operating performance, profitability and shareowner value creation. At a minimum, the CEO succession planning process should: a. Become a routine topic of discussion by the board. b. Extend down throughout the company emphasizing the development of internal CEO candidates and senior managers while remaining open to external recruitment. c. Require all board members be given exposure to internal candidates. d. Encompass both a long-term perspective to address expected CEO transition periods and a short-term perspective to address crisis management in the event of death, disability or untimely departure of the CEO. e. Provide for open and ongoing dialogue between the CEO and board while incorporating an opportunity for the board to discuss CEO succession planning without the CEO present. f. Be disclosed to shareowners on an annual basis and in a manner that would not jeopardize the implementation of an effective and timely CEO succession plan. (III.B.2.8)	The board should approve and maintain a detailed CEO succession plan and publicly disclose the essential features in the proxy statement. An integral facet of management succession planning involves collaboration between the board and the current chief executive to develop the next generation of leaders from within the company's ranks. Boards therefore should: (1) make sure that broad leadership development programs are in place generally; and (2) carefully identify multiple candidates for the CEO role specifically, well before the position needs to be filled. To that end, the plan should address both short and long-term succession scenarios. (§ 2.9)	One of the board's most important responsibilities is the selection, development and evaluation of executive leadership. Strong, stable leadership with proper values is critical to the success of the corporate enterprise. The board should continuously monitor and evaluate the performance of the CEO and senior executives, and should oversee a succession plan for executive management. The board should disclose the succession planning process generally. (p. 17)	Planning for the succession of the CEO is one of the primary responsibilities of boards of directors. The voting fiduciary should support proposals that encourage companies to adopt and disclose their succession planning policies. These policies should address both long-term and short-term succession scenarios as well as the company's leadership development programs, including the identification of internal candidates for the CEO role. (Guideline IV.A.14)	<u>Proxy Voting Guidelines</u> Generally vote FOR proposals seeking disclosure on a CEO succession planning policy, considering at a minimum, the following factors: • The reasonableness/scope of the request; and • The company's existing disclosure on its current CEO succession planning process. (p. 18) <u>QuickScore</u> *Not covered.*

VII.D. Formal Evaluation of the Chief Executive Officer[40]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
The board of directors has five primary functions, [one of which is to] [r]egularly evaluate . . . the chief executive officer. (§ 3.02, Comment a.1) The primary function of the board of directors is the selection of the chief executive officer. . . . In its broader sense, "selection" includes monitoring performance . . . . (§ 3.02, Comment d, *quoting* the BRT, "Corporate Governance and American Competitiveness" (1990), p. 246)	Making decisions regarding the selection, compensation and evaluation of a well-qualified and ethical CEO is the single most important function of the board. (p. 7) Under the oversight of an independent committee or the lead director, the board should annually review the performance of the CEO and participate with the CEO in the evaluation of members of senior management. All non-management members of the board should have an opportunity to participate with the CEO in senior management evaluations. The results of the CEO's evaluation should be promptly communicated to the CEO in executive session by representatives of the independent directors and used by the compensation committee or independent directors in determining the CEO's compensation. (p. 28) *See* pp. 10-12 (*responsibilities of the CEO and senior management*).	The board should ensure that someone is charged with organizing the board's evaluation of the CEO and providing continuous ongoing feedback. (p. 4) There are three separate aspects to effective evaluation at the board level, each of which constitutes a critical component of board professionalism and effectiveness: CEO evaluation, board evaluation, and individual director evaluation. All three types of evaluation should be assessed vis-à-vis pre-established criteria to provide the CEO, the board as a whole, and each director with critical information pertaining to their collective and individual performance and suggested areas for improvement. Boards should regularly and formally evaluate the CEO, the board as a whole, and individual directors. Boards should ensure that independent directors create and control the methods and criteria for evaluating the CEO, the board, and individual directors. Such an evaluation practice will enable boards to identify and address problems before they reach crisis proportions. (p. 5) *See* REPORT OF THE NACD BLUE RIBBON COMMISSION ON PERFORMANCE EVALUATION OF CHIEF EXECUTIVE OFFICERS, BOARDS, AND DIRECTORS (1994).	The board should . . . adopt a process for review and evaluation of the Chief Executive Officer. (Part 2, Principle V) Boards should develop processes to evaluate the performance of the CEO on at least an annual basis. (Part 2, Principle V, Best Practice 2)	*Not covered directly, but see* Principle VI (The corporate governance framework should ensure . . . the effective monitoring of management by the board . . .). *See also* Principle VI.D.3 (The board should fulfill certain key functions, including . . . [s]electing, compensating, monitoring and, when necessary, replacing key executives . . .). *See also* Annotation to Principle VI.D.4 (In an increasing number of countries it is regarded as good practice for boards to develop and disclose a remuneration policy statement covering board members and key executives . . . specify[ing] the relationship between remuneration and performance, and includ[ing] measurable standards that emphasise the longer run interests of the company over short-term considerations.). *See also* Annotation to Principle VI.E (Independent board members . . . can bring an objective view to the evaluation of the performance of the board and management.).

[40] Under NYSE listing rules, the compensation committee is required to adopt and disclose a written charter that addresses evaluation of the CEO's performance in light of corporate goals and objectives. There is no comparable requirement for Nasdaq-listed companies. *See* Appendix. *See also* 2011 ABA Guidebook at 12-13 ("State corporate statutes emphasize the board's responsibility to make major decisions on behalf of the corporation and to oversee the management of the corporation. [B]oard responsibilities . . . generally include . . . selecting the CEO, setting goals for the CEO and other senior executives, reviewing their performance, evaluating and establishing their compensation, and making changes when appropriate…"); *id*. at 82 ("The principal functions of the compensation committee are to . . . review and approve corporate goals and objectives relevant to the CEO and senior executive compensation and annually evaluate executive performance in light of those goals and objectives . . . "); *id*. at 103 ("[The nominating and governance] committee, or another board committee should, at least annually, review the performance of the CEO and members of senior management."); 1994 NACD Report at 1, 3 ("Formal performance reviews of the CEO are necessary. The process can take many different forms, depending on the company. Every board should consider developing a job description for the CEO. The CEO and the board should agree to performance objectives, established in advance of each fiscal year. Such objectives might include quantitative performance factors and qualitative ones, such as integrity, vision and leadership.")

VII.D. Formal Evaluation of the Chief Executive Officer				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Independent directors establish CEO performance criteria focused on optimizing operating performance, profitability and shareowner value creation; and regularly review the CEO's performance against those criteria. (III.B.2.7) The independent chairperson [or lead director should] [c]oordinate performance evaluations of the CEO. (Appendix C)	Each year, the compensation committee should review performance of [the CEO and other highly paid executives] and approve any bonus, severance, equity-based award or extraordinary payment made to them. (§ 5.5e) The compensation committee is responsible for structuring executive pay and evaluating executive performance within the context of the pay structure of the entire company, subject to approval of the board of directors. (§ 5.5) *See* § 5.5d (Compensation of the [CEO and other highly paid executives] should be driven predominantly by performance. The compensation committee should establish performance measures for executive compensation that are agreed to ahead of time and publicly disclosed. Multiple performance measures should be used in an executive's incentive program, and the measures should be sufficiently diverse that they do not simply reward the executive multiple times for the same performance. The measures should be aligned with the company's short- and long-term strategic goals, and pay should incorporate company-wide performance metrics, not just business unit performance criteria. Performance measures applicable to all performance-based awards (including annual and long-term incentive compensation) should reward superior performance—based predominantly on measures that drive long-term value creation—at minimum reasonable cost. Such measures should also reflect downside risk. The compensation committee should ensure that key performance metrics cannot be manipulated easily . . . [and] should ensure that sufficient and appropriate mechanisms and policies . . . are in place to recover erroneous bonus and incentive awards paid in cash, stock or any other form of remuneration to current or former executive officers, and to prevent such awards from being paid out in the first instance. Awards can be erroneous due to acts or omissions resulting in fraud, financial results that require restatement or some other cause that the committee believes warrants withholding or recovering incentive pay. Incentive-based compensation should be subject to recovery for a period of time of at least three years following discovery of the fraud or cause forming the basis for the recovery. The mechanisms and policies should be publicly disclosed.).	One of the board's most important responsibilities is the selection, development and evaluation of executive leadership. Strong, stable leadership with proper values is critical to the success of the corporate enterprise. The board should continuously monitor and evaluate the performance of the CEO and senior executives. (p. 17) Executive sessions can be used to evaluate CEO performance . . . . (p. 18)	*Not covered directly, but see* Guideline IV.A.8 (The primary purpose of the board of directors is to protect shareholders' interests by providing independent oversight of management including the CEO.). *See also* Guideline IV.A (Shareholders elect corporate directors to hire, monitor, compensate and, if necessary, terminate senior management.).	<u>Proxy Voting Guidelines</u> *Not covered.* <u>QuickScore</u> *Not covered.*

VII.E. Executive Compensation & Stock Ownership[41]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
The board of directors of a publicly held corporation should . . . fix the compensation of . . . the principal senior executives. (§ 3.02(a)(1)) The board of directors has five primary functions, [one of which is to] [d]etermine management compensation. (§ 3.02, Comment a.1) *See* § 5.03 (*duty of fair dealing with respect to senior executive compensation*).	[I]t is the responsibility of the board, through its compensation committee, to adopt and oversee the implementation of compensation policies, establish goals for performance-based compensation, and determine the compensation of the CEO and senior management. Compensation policies and goals should be aligned with the corporation's long-term strategy, and they should create incentives to innovate and produce long-term value for shareholders without excessive risk. These policies and the resulting compensation should be communicated clearly to shareholders. (p. 3) The compensation committee should require senior management to build and maintain significant continuing equity investment in the corporation. . . . [T]he compensation committee . . . establishes appropriate incentives for management and all employees. . . . [and] should see that . . . appropriate practices [are in place] to mitigate risks created by compensation programs. Executive compensation should directly link the interests of senior management . . . to the long-term interest of shareholders. It should include significant performance-based criteria related to long-term shareholder value and should reflect upside potential and downside risk. The compensation committee should carefully examine the benefits and perquisites provided to senior management and determine whether they appropriately balance the interests of long-term shareholders and the ability of the corporation to recruit and retain top talent. (pp. 23-24) *See* Topic Heading II.C, *above*. *See also* Business Roundtable, EXECUTIVE COMPENSATION: PRINCIPLES AND COMMENTARY (January 2007).	Creating an independent and inclusive process for… remunerating . . . the CEO will ensure board accountability to shareholders and reinforce perceptions of fairness and trust between and among management and board members. Boards should involve all directors in all stages of the CEO . . . selection and compensation processes. (p. 4) A significant ownership stake leads to a stronger alignment of interests between directors and shareholders, and between executives and shareholders. Increasingly, compensation programs for directors and senior management are emphasizing stock over benefits. (p. 5) *See* Topic Headings II.C, *above and* X.D, *below*. *See also* REPORT OF THE NACD BLUE RIBBON COMMISSION ON EXECUTIVE COMPENSATION AND THE ROLE OF THE COMPENSATION COMMITTEE (2003, updated 2007).	Performance-based compensation tied to specific goals can be a powerful and effective tool to advance the business interests of the corporation, and the use of performance-based compensation tools should be encouraged in a balanced and cost-effective manner. (Part 1, Principle II) The Compensation Committee should endeavor to use all equity-based compensation arrangements in a reasonable and cost-effective manner. (Part 1, Principle III) Compensation policies should encourage a meaningful financial stake in the corporation through long term "acquire and hold" practices by key executives and directors, while insuring that any contribution by the company to creating that stake is done in a reasonable and cost-effective manner. (Part 1, Principle IV) Compensation decisions should be based on the effectiveness of various forms of compensation to achieve company goals and their respective relative costs, rather than simply on their accounting treatment. (Part 1, Principle V) *See* Part 1, Principle II, Best Practice 3 (The Compensation Committee should adopt specific policies and programs to recapture incentive compensation from executives in the event [of] malfeasance . . .). *See also* Topic Headings II.C *and* IV.K, *above*.	The board should fulfill certain key functions, including . . . [s]electing, compensating, monitoring and, when necessary, replacing key executives [and] [a]ligning key executive and board remuneration with the longer term interests of the company and its shareholders. (Principles VI.D.3 – VI.D.4) In an increasing number of countries it is regarded as good practice for boards to develop and disclose a remuneration policy statement covering board members and key executives. Such policy statements specify the relationship between remuneration and performance, and include measurable standards that emphasise the longer run interests of the company over short term considerations. Policy statements . . . often specify terms to be observed by board members and key executives about holding and trading the stock of the company, and the procedures to be followed in granting and repricing of options. In some countries, policy also covers the payments to be made when terminating the contract of an executive. It is considered good practice in an increasing number of countries that remuneration policy and employment contracts for board members and key executives be handled by a special committee of the board comprising either wholly or a majority of independent directors. There are also calls for a remuneration committee that excludes executives that serve on each others' remuneration committees, which could lead to conflicts of interest. (Annotation to Principle VI.D.4) *See* Topic Headings II.C, *above and* X.D, *below*.

[41] The Dodd-Frank Act requires companies to provide for an advisory shareholder vote on executive compensation, which must occur every one, two or three years (as determined by shareholders at least once every six years). *See* 2011 ABA Guidebook at 83 ("The compensation committee independence requirement is designed to promote objective judgment on the sensitive matter of management's compensation, and in particular, the compensation of the CEO. At a minimum, the compensation committee should create a thorough process to reach an informed decision that is something more than rubber-stamping somebody else's recommendations. How much more, of course, depends on the compensation committee's judgment, as well as the facts and circumstances of the situation."); 2013 NACD Survey at 8 (Survey respondents chose corporate performance and valuation second in a list of the highest priorities for their board in 2013).

VII.E. Executive Compensation & Stock Ownership				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Compensation programs are one of the most powerful tools available to the company to attract, retain, and motivate key employees to optimize operating performance, profitability and sustainable long-term shareowner return. CalPERS considers long-term to be five or more years for mature companies and at least three years for other companies. Well-designed compensation programs will be adequately disclosed and align management with the long-term economic interests of shareowners. . . . [T]he philosophy and practice of executive compensation needs to be more performance-based. . . . CalPERS emphasizes improved disclosure, the alignment of interests between executive management and shareowners, and enhanced compensation committee accountability for executive compensation. (III.B.3) To ensure the alignment of interest with long-term shareowners, executive compensation programs are to be designed, implemented, and disclosed to shareowners by the board, through an independent compensation committee. Executive compensation programs should not restrict the company's ability to attract and retain competent executives. (III.B.3.1.a) Executive compensation [should] be comprised of a combination of cash and equity based compensation. (III.B.3.1.b) Executive equity ownership should be required through the attainment and continuous ownership of a significant equity investment in the company. Executive stock ownership guidelines and holding requirements should be disclosed to shareowners on an annual basis. (III.B.3.3.a) *See also provisions relating to:* • *Compensation structure* (III.B.3.1); • *incentive compensation* (III.B.3.2); • *equity compensation* (III.B.3.3); • *severance agreements* (III.B.3.4); • *"other" forms of compensation* (III.B.3.5); *and* • *retirement plans* (III.B.3.6). *See* Topic Headings II.C, *above and* X.D, *below*.	In developing, approving and monitoring the executive pay philosophy, the compensation committee should consider the full range of pay components, including structure of programs, desired mix of cash and equity awards, goals for distribution of awards throughout the company, the relationship of executive pay to the pay of other employees, use of employment contracts and policy regarding dilution. (§ 5.5b) Compensation of the executive oversight group should be driven predominantly by performance. . . . Performance measures applicable to all performance-based awards (including annual and long-term incentive compensation) should reward superior performance—based predominantly on measures that drive long-term value creation—at minimum reasonable cost. Such measures should also reflect downside risk. (§ 5.5d) Executives should be required to own stock—excluding unexercised options and unvested stock awards—equal to a multiple of salary [after a reasonable period of time]. The stock subject to the ownership requirements should not be pledged or otherwise encumbered. The multiple should be scaled based on position, for example: two times salary for lower-level executives and up to six times salary for the CEO. (§ 5.15a) *See also provisions relating to:* • *clawbacks* (§ 5.5d); • *benchmarking* (§ 5.5i); • *salary* (§ 5.6); • *annual incentive compensation* (§ 5.7); • *long-term incentive compensation* (§ 5.8); • *dilution* (§ 5.9); • *stock option awards* (§ 5.10); • *stock awards/units* (§ 5.11); • *perquisites* (§ 5.12); • *employment contracts, severance and change-of-control payments* (§ 5.13); • *retirement arrangements* (§ 5.14); *and* • *stock ownership* (§ 5.15). *See* Topic Headings II.C, *above and* X.D, *below*.	[W]e support [appropriately customized] compensation policies that promote and reward the creation of long-term sustainable shareholder value. (pp. 12-13) Executive compensation should be based on the following principles: 1. Compensation should be objectively linked to appropriate company-specific metrics that drive long-term sustainable value and reflect operational parameters that are affected by the decisions of the executives being compensated. 2. Compensation plans should be based on a performance measurement cycle that is consistent with the business cycle of the corporation. 3. Compensation should include a mixture of cash and equity … without incentivising excessive risk. 4. [C]onsider … overall [corporate] performance [and] each executive's responsibilities and criteria that are actually within each executive's control or influence. 5. Compensation should be reasonable by prevailing industry standards, appropriate to the company's size and complexity, and fair relative to pay practices throughout the company. 6. The board should not unduly rely on comparative industry data and other outside surveys …. 7. Compensation Committees should work only with [independent] consultants …. 8. Companies should use peer groups that are consistent with their industry, size, scope and market for executive talent. 9. Executive performance evaluations should .. balance … formulaic and subjective analysis …. 10. [E]mployment contracts … should balance the need to attract and retain [executive] services … with the obligation to avoid exposing the company to liability, unintended [and excessive] costs ... (pp. 21-22) Companies should support requirements [for executives to hold] stock obtained through exercise of options … for substantial periods of time, apart from partial sales permitted to meet tax liabilities …. Companies should establish holding periods commensurate with pay level and seniority[, and require] minimum stock ownership requirements … to ensure [alignment with shareholder interests]. (p. 23) *See generally* pp. 20-24 (Executive Compensation) *and* Appendix pp. 32-34 (Guidelines for Compensation Issues). *See also* Topic Headings II.C, *above and* X.D, *below*.	Executive compensation packages are generally composed of annual salary, annual incentive awards, long-term incentive awards, stock options and other forms of equity compensation. The structure of a CEO's compensation package influences whether the CEO focuses on boosting the corporation's day-to-day share price or concentrates on building long-term corporate value. …[L]ong-term incentive compensation should constitute more than 50% of … total compensation, and pay-for-performance over the long term should be the benchmark... Pay-for-performance means rewarding executives for meeting explicit and demanding performance criteria, and penalizing executives (by either reducing or withholding compensation) for failures to meet these goals…. A well-designed executive compensation plan aligns the interests of senior management with the long-term interests of the company and its shareholders. . . . Executive compensation policies and plans should be created by … independent directors – with the assistance of independent .. consultants – and approved by shareholders. … [E]nsure that … compensation does not create incentives for executives to take on excessive risk or make short-term decisions that are detrimental to long-term investors (Guideline IV.C) [E]xecutives should be required to hold a substantial portion of their vested stock at least until reaching retirement age. (Guideline IV.C.4) [E]xecutive[s] should be required to hold a substantial portion of … equity compensation awards …(e.g. 75% of their after-tax stock option proceeds), at least until they reach retirement age. Equity compensation awards are intended to align management interests with those of shareholders, and allowing executives to sell these shares while they are employees of the company undermines this purpose. ..[H]olding requirements that are based on a multiple of cash compensation may be inadequate. (Guideline IV.C.4.9) *See generally* Guideline IV.C, Executive and Director Compensation. *See also* Topic Headings II.C, *above and* X.D, *below*.	<u>Proxy Voting Guidelines</u> A rigorous stock ownership guideline should be at least 10x base salary for the CEO, with the multiple declining for other executives. (p. 52) *See guidelines in relation to executive pay evaluation, equity-based and other incentive plans, and shareholder proposals on compensation* (pp. 38-55). <u>QuickScore</u> *See questions in relation to:* • *Share recycling for options/SARs* (Question 129) *and excessive equity grants* (Question 130); • *Minimum vesting periods for stock options, SARS and restricted stock* (Questions 131, 132); • *Holding periods for executives' stock options and restricted shares* (Questions 134, 135); • *Option/SAR repricing, exchanges and cash buy-outs* (Questions 138, 139, 238); • *Change-in-control and severance agreements* (Questions 148, 153, 161, 240, 247); • *Clawbacks, tax gross-ups* (Questions 155, 162); • *Multi-year guaranteed bonuses.* (Question 156); • *Pay for performance* (Questions 226-229, 300); • *Ratio of CEO and next highest paid exec comp* (Question 232) *and ratio of CEO's non-perf-based comp to salary* (Question 237); • *Plan evergreen provisions* (Question 239); • *Stock ownership guidelines* (Question 145); • *CEO employment agreements* (Question 163); • *Pledging and hedging shares* (Questions 243, 244); *and* • *Problematic pay practices or policies that raise concern* (Question 301). *See* Topic Headings II.C, *above and* X.D, *below*.

VII.F. Director Compensation & Stock Ownership[42]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
The nominating committee may also perform functions . . . that are assigned to it by a standard of the corporation. Among the functions that might be assigned by such a standard [is] reviewing the compensation of directors . . . . (§ 3A.04, Comment e) A director . . . who receives compensation from the corporation for services in that capacity fulfills the duty of fair dealing with respect to compensation if either: (1) The compensation is fair to the corporation when approved; (2) The compensation is authorized in advance by disinterested directors . . . ; (3) The compensation is ratified by disinterested directors who satisfy the requirements of the business judgment rule . . . ; or (4) The compensation is authorized in advance or ratified by disinterested shareholders, and does not constitute a waste of corporate assets at the time of the shareholder action. (§ 5.03(a)) *See* § 5.03, Comment e (Section 5.03 is intended to vest wide discretion in disinterested directors or shareholders in satisfying themselves that the corporation can reasonably be expected to receive the benefits contemplated by a particular arrangement . . . .). *See* Topic Heading II.C, *above*.	The board of directors, with the assistance of the committee responsible for overseeing director compensation, should periodically review the compensation of the board in light of developments in the marketplace and the board's needs. This review should include consideration of differential compensation for specific roles that carry more responsibility. . . . The board should approve changes in compensation based on the recommendation of the committee. In determining director compensation, the board should focus on creating total director compensation that is reasonable relative to directors' responsibilities and compensation at comparable companies. The board also should be comfortable that compensation adequately rewards directors for the risks associated with board service, as well as their time and efforts. Director compensation should consist of a mix of cash and equity. The board should consider paying the cash portion of director compensation in the form of an annual retainer, rather than through meeting fees, to encourage directors to view board service as an ongoing commitment and to foster a long-term focus. Equity helps align the interests of directors with those of the corporation's shareholders, but equity compensation should be carefully designed to avoid unintended incentives such as an emphasis on short-term market value changes. Corporations increasingly are providing the long-term equity component of director compensation in the form of restricted stock, rather than stock options, to better align directors' interests with those of shareholders. The board should establish a requirement that directors hold a meaningful amount of the corporation's stock for as long as they remain on the board. (p. 25)	A significant ownership stake leads to a stronger alignment of interests between directors and shareholders . . . Increasingly, compensation programs for directors and senior management are emphasizing stock over benefits. The REPORT OF THE NACD BLUE RIBBON COMMISSION ON DIRECTOR COMPENSATION recommends the following best practices with respect to director compensation: • Boards should establish a process by which directors can determine the compensation program in a deliberative and objective way. • Boards should set a substantial target for stock ownership by each director and a time period during which this target is to be met. • Boards should define the desirable total value of all forms of director compensation. • Boards should pay directors solely in the form of equity and cash with equity representing a substantial portion of the total up to 100 percent; boards should dismantle existing benefit programs and avoid creating new ones. • Boards should disclose fully in the proxy statement the philosophy and process used to determine director compensation and the value of all elements of compensation. (p. 5) *See* Topic Heading II.C, *above*.	Compensation policies should encourage a meaningful financial stake in the corporation through long term "acquire and hold" practices by key executives and directors, while insuring that any contribution by the company to creating that stake is done in a reasonable and cost-effective manner. (Part 1, Principle IV) While recognizing that director compensation involves policy issues different from those in management compensation, directors nonetheless should own and retain substantial amounts of company stock they receive as compensation or otherwise acquire. Furthermore, at a minimum, required retention and holding levels by directors should also be established. (Part 1, Principle IV, Best Practice) *See* Topic Heading II.C, *above*.	The board should fulfill certain key functions, including . . . aligning key executive and board remuneration with the longer term interests of the company and its shareholders. (Principle VI.D.4) In an increasing number of countries it is regarded as good practice for boards to develop and disclose a remuneration policy statement covering board members and key executives. Such policy statements specify the relationship between remuneration and performance, and include measurable standards that emphasise the longer run interests of the company over short term considerations. Policy statements generally tend to set conditions for payments to board members for extra-board activities, such as consulting. They also often specify terms to be observed by board members and key executives about holding and trading the stock of the company, and the procedures to be followed in granting and repricing of options. In some countries, policy also covers the payments to be made when terminating the contract of an executive. (Annotation to Principle VI.D.4) *See also* Topic Heading II.C, *above*.

[42] Under NYSE listing rules, domestic listed companies' corporate governance guidelines are required to address the matter of director compensation. There is no comparable requirement for Nasdaq-listed companies. *See* Appendix. *See* 2011 ABA Guidebook at 106 ("Directors nevertheless have the responsibility to determine their own compensation, so they must ensure they have considered the information necessary to reach a fair decision, including data on peer companies and an analysis of any factors relating to their particular circumstance, such as the complexity of the company and the expected time commitment. Director compensation programs should align the directors' interests with the long-term interests of the corporation. Director compensation may take a number of different forms, including annual stock or cash retainers, attendance fees for board and committee meetings, deferred compensation plans, stock options, and restricted stock grants…. The board should be sensitive to and avoid compensation policies or corporate perquisites that might impair the independence of its non-management directors."); 1994 NACD Report at 20 ("Each board must decide what plan best serves the needs of the company, its shareholders, and its directors. For companies that wish to increase stock ownership by directors, there is a range of possibilities, from restricted stock grants with prohibitions on resale, to stock options, to voluntary guidelines for stock purchases. Every board should develop clear and comprehensive criteria for director pay, making occasional exceptions when unforeseen events make this necessary. Also, each board must decide the most appropriate mechanics for disclosing its process for setting director compensation. Director pay should be set annually, but evaluated on an ongoing basis."); 2013 Spencer Stuart Board Index at 33 ("The average total compensation for S&P 500 directors is $249,168, 3% higher than the 2012 average. For boards with nine independent directors, the average annual cost for director compensation is just over $2.2 million. When compensation for the independent chairman is excluded, the average total compensation per director falls to $245,842. Equity continues to represent the largest share of director compensation. 52% of average director compensation is provided in the form of stock grants, a slight increase from 50% in 2012. Stock options fell as a share of compensation from 8% last year to 6%. Unchanged from last year, cash compensation represents 39% of total compensation. 72% of boards have deferred compensation plans.).

VII.F. Director Compensation & Stock Ownership				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Director compensation should be a combination of cash and stock in the company. (III.B.3.7.a) Director equity ownership should be required through the attainment of continuous ownership of an equity investment in the company. Director stock ownership guidelines and holding requirements should be disclosed to shareowners on an annual basis. (III.B.3.7.b) *See* Topic Heading II.C, *above*.	[D]irectors should own, after a reasonable period of time, a meaningful position in the company's common stock . . . The stock subject to the ownership requirements should not be pledged or otherwise encumbered. (§ 5.15a) Policy issues related to director compensation are fundamentally different from executive compensation. Director compensation policies should accomplish the following goals: (1) attract highly qualified candidates, (2) retain highly qualified directors, (3) align directors' interests with those of the long-term owners of the corporation and (4) provide complete disclosure to shareowners regarding all components of director compensation including the philosophy behind the program and all forms of compensation . . . [D]irector compensation should consist solely of a combination of cash retainer and equity-based compensation. The cornerstone . . . should be alignment of interests through the attainment of significant equity holdings in the company meaningful to each individual director. . . . [E]quity obtained with an individual's own capital provides the best alignment of interests with other shareowners. However, compensation plans can provide supplemental means of obtaining long-term equity holdings through equity compensation, long-term holding requirements and ownership requirements. (§ 6.1) Ownership requirements should be at least three to five times annual compensation. (§ 6.4b) *See* Guideline 6, Director Compensation, *and* Topic Heading II.C, *above*.	Directors should have a direct, personal and meaningful investment in the common stock of the company. We believe that stock ownership helps align board members' interests with those of shareholders. Director compensation programs should include a balanced mix of cash and equity and be structured to encourage a long-term perspective. (p. 15) Companies should require and specify minimum stock ownership requirements for directors and company executives to ensure their interests are aligned with shareholders. (p. 23) *See* Topic Heading II.C, *above*.	Shareholder evaluation of director compensation is especially important since directors are responsible for compensating themselves. The voting fiduciary should support compensating directors in a fashion that rewards excellent service and in a manner that does not compromise the independence of directors. To enhance director's independence from management, director compensation plans should be separate from executive compensation plans and should be voted on separately by shareholders. Excessively large compensation packages may also make directors less willing to challenge management out of fear of not being renominated. Direct stock ownership is the best way to align the interests of outside directors and shareholders. Accordingly, a significant proportion of director compensation should be in the form of stock. Directors should be subject to reasonable equity-holding requirements. In addition to these conditions, director compensation plans should be evaluated using the same standards as apply to executive compensation plans. (Guideline IV.C.11) *See generally* Guideline IV.C, Executive and Director Compensation, *and* Topic Heading II.C, *above*.	<u>Proxy Voting Guidelines</u> *See guidelines in relation to:* • *Equity compensation plans for non-employee directors; and* • *Retirement plans for non-employee directors* (pp. 49-50). Generally vote AGAINST shareholder proposals that mandate a minimum amount of stock that directors must own in order to qualify as a director or to remain on the board. . . . [T]he company should determine the appropriate ownership requirement. (p. 52) <u>QuickScore</u> Are directors subject to stock ownership guidelines? Best practice dictates that directors maintain a meaningful level of share ownership by a certain time after appointment to better align their interests with those of shareholders. (Question 143) Do all directors with more than one year of service own stock? ... [A]ll directors should maintain an equity stake in the company. (Question 144) Did [a] . . . director pledge company shares? The prospect that [a] . . . director may be forced to sell a substantial amount of shares poses significant risks for other shareholders, who may see the value of their shares decline . . . (Question 243) *See* Topic Heading II.C, *above*.

VII.G. Internal Control Systems[43]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
[The] audit committee [should] implement and support the oversight function of the board by reviewing on a periodic basis the corporation's processes for producing financial data, its internal controls, and the independence of the corporation's external auditor. (§ 3.05) It is recommended . . . that [t]he audit committee . . . should: . . . . (e) Review the results of each external audit . . . ; (f) Review the corporation's annual financial statements . . . ; (g) Consider, in consultation with the external auditor and the senior internal auditing executive, if any, the adequacy of the corporation's internal controls; (h) Consider major changes and other major questions of choice respecting the appropriate auditing and accounting principles and practices . . . . (§ 3A.03)	Management is responsible for the integrity of the corporation's financial reporting system, and the accurate and timely preparation of the corporation's financial statements and related disclosures in accordance with [GAAP] and in compliance with applicable laws and regulations. It is management's responsibility – under the direction of the CEO and the corporation's principal financial officer – to establish, maintain and periodically evaluate the corporation's internal controls over financial reporting and the corporation's disclosure controls and procedures. . . . The CEO and . . . principal financial officer also are responsible for certifying the accuracy and completeness of the corporation's financial statements and the effectiveness of the corporation's internal and disclosure controls. (p. 11) The audit committee should oversee the corporation's system of internal controls over financial reporting and its disclosure controls and procedures, including the processes for producing the certifications required of the CEO and principal financial officer. On a periodic basis, the committee should review with both the internal and outside auditors, as well as with management, the corporation's procedures for maintaining and evaluating the effectiveness of these systems. The committee should be promptly notified of any significant deficiencies or material weaknesses in internal controls and should be kept informed about the steps and timetable for correcting them. (pp. 18-19)	Among the most important missions of the board is ensuring that shareholder value is both enhanced through corporate performance and protected through adequate internal financial controls. Boards should seek candidates with expertise in financial accounting and corporate finance, especially with respect to trends in debt and equity markets. (p. 8) *See* REPORT OF THE NACD BLUE RIBBON COMMISSION ON RISK GOVERNANCE (2009) *and* REPORT OF THE NACD BLUE RIBBON COMMISSION ON RISK OVERSIGHT (2002).	Public companies should revise their internal controls to reflect a broad risk-based approach and to support the certification process for both financial reports and internal controls. (Part 2, Principle VI; Part 3, Principle III) All companies should have an internal audit function, regardless of whether it is an "in-house" function or one performed by an outside accounting firm [other than] the regular outside auditors. (Part 3, Principle III, Best Practice 1) The internal auditor should have a direct line of communication and reporting responsibility to the audit committee, and he or she should attend all regularly scheduled audit committee meetings, report on the status of audits conducted by the internal audit group, report to the committee on other matters that the internal auditor, in his or her judgment, believes should be brought to the audit committee's attention, and meet with the audit committee in executive session. (Part 3, Principle III, Best Practice 3)	The board should . . . [e]nsur[e] the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control . . . . (Principles VI.D.7-VI.D.8) Ensuring the integrity of the essential reporting and monitoring systems will require the board to set and enforce clear lines of responsibility and accountability throughout the organisation. The board will also need to ensure that there is appropriate oversight by senior management. One way of doing this is through an internal audit system directly reporting to the board. . . . Companies are also well advised to set up internal programmes and procedures to promote compliance with applicable laws, regulations and standards, including statutes to criminalise bribery of foreign officials . . . . (Annotation to Principle VI.D.7)

[43] Under NYSE listing rules, the CEO of each domestic listed company is required to certify to the NYSE annually that he or she is not aware of any violation by the company of NYSE listing standards. Upon finding a violation of a listing standard, the NYSE may issue a public reprimand letter to any listed company and ultimately suspend or de-list an offending company. NYSE- and Nasdaq-listed companies are required to promptly notify the relevant exchange if an executive officer becomes aware of any noncompliance with corporate governance listing standards. The Sarbanes-Oxley Act requires quarterly CEO and CFO certifications and disclosure in relation to internal control over financial reporting and disclosure controls and procedures, and provides "whistleblower" protections (which have been expanded by the Dodd-Frank Act). *See* Appendix.

VII.G. Internal Control Systems				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
The Audit Committee should require the auditor's opinion to include commentary on any management assertion that the system of internal financial controls is operating effectively and efficiently, that assets are safeguarded, and that financial information is reliable as of a specific date, based on a specific integrated framework of internal controls. (III.B.4.9)	*Not covered.*	[T]he board should . . . mandate strong internal controls, avoid conflicts of interest, promote fiscal accountability and ensure compliance with applicable laws and regulations . . . [and] implement procedures to ensure that the board is promptly informed of any violations of corporate standards . . . . (p. 17) [T]he Audit Committee is . . . responsible for overseeing the adequacy and effectiveness of the company's internal controls. (p. 19)	*Not covered*.	Proxy Voting Guidelines *Not covered.* QuickScore Has the company disclosed any material weaknesses in its internal controls in the past two fiscal years? Companies with significant material weaknesses potentially have ineffective internal controls, which may lead to inaccurate financial statements, hampering shareholders' ability to make informed investment decisions, and may lead to a weakening in public confidence and shareholder value. (Question 8)

VII.H. Risk Management and Oversight[44]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered.	[T]t is the responsibility of management, under the oversight of the board, to . . . identify, evaluate and manage the risks inherent in the corporation's strategy. The board of directors should understand the corporation's strategic plans, the associated risks, and the steps that management is taking to monitor and manage those risks. The board and senior management should agree on the appropriate risk profile for the corporation, and they should be comfortable that the strategic plans are consistent with that risk profile. . . . Compensation policies and goals should . . . create incentives to innovate and produce long-term value for shareholders without excessive risk. (pp. 2-3) The board has responsibility for overseeing the significant risks facing the corporation and the processes that management has implemented to identify and manage risk. . . . The board should establish an appropriate structure for overseeing risk, involving assistance from committees as appropriate and the designation of [responsible] senior management. [The board's risk oversight structure] should enable the board to remain fully informed about, and understand, all of the corporation's major risks and the steps that the corporation is taking to manage them. … As part of its risk oversight function, the board should oversee the designation of senior management who will be responsible for business resiliency. (pp. 8-9) Unless the full board or another committee does so, the audit committee should oversee the corporation's risk assessment and risk management. Many corporations address risk through the audit committee, in part because [of NYSE] listing standards. However, the audit committee should not be the sole body responsible for risk oversight, and the board may decide that it is appropriate to allocate responsibility for some types of risk to other committees. [D]ifferent [risk oversight] structures may be appropriate depending on a corporation's industry and other factors. (p. 19)	*Not covered.* *See* REPORT OF THE NACD BLUE RIBBON COMMISSION ON RISK GOVERNANCE (2009) *and* REPORT OF THE NACD BLUE RIBBON COMMISSION ON RISK OVERSIGHT (2002).	[Directors] must understand . . . key strategic issues such as . . . the definition and assessment of the company's business risks . . . . (Part 2, Introduction at p.16) The [Sarbanes-Oxley] Act and NYSE listing standards enumerate a variety of areas for which audit committees are responsible, including . . . assessments of company risks and vulnerabilities . . . . (Part 3, Principle II at p. 37) Effective internal control systems should be designed to encompass all major areas of risk and vulnerability in a company's operation. . . . A recent study of corporate directors conducted jointly by the Institute of Internal Auditors and the [NACD] found that over 50 percent of directors surveyed indicated that their companies did not have in place effective risk management systems. . . . The Commission believes that the evaluation of the company's control environment should include an analysis of the company's overall risk environment and the controls and information systems that address these risks. (Part 3, Principle III) The internal auditors should prepare for review and approval by the audit committee a multi-year audit plan of not less than three years, centered on the corporation's risks and vulnerabilities. The audit committee and any other committee of the board dealing with risk management should review and update this risk-based plan on an annual basis. (Part 3, Principle III, Best Practice 2) [E]very public company board, and especially the audit committee, should make enterprise risk assessment and internal controls high priorities . . . to facilitate the certification and reporting processes required by Sections 302 and 404 of the [Sarbanes-Oxley] Act. (Part 3, Principle III, Best Practice 4)	The board should fulfill certain key functions, including [r]eviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures. (Principle VI.D.1) An area of increasing importance for boards and which is closely related to corporate strategy is risk policy. Such policy will involve specifying the types and degree of risk that a company is willing to accept in pursuit of its goals. It is thus a crucial guideline for management that must manage risks to meet the company's desired risk profile. (Annotation to Principle VI.D.1) The board should fulfill certain key functions, including [e]nsuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards. (Principle VI.D.7) *See* Annotation to Principle V.A.6. (The Principles do not envision the disclosure of information in greater detail than is necessary to fully inform investors of the material and foreseeable risks of the enterprise. Disclosure of risk is most effective when it is tailored to the particular industry in question. Disclosure about the system for monitoring and managing risk is increasingly regarded as good practice.).

[44] On December 16, 2009, the SEC amended its rules to require disclosure of the extent of the board's role in risk oversight of the company, such as how the board administers its oversight function, and the effect that this has on the board's leadership structure. Under NYSE listing rules, the audit committee is required to have a written charter that addresses, among other things, the discussion of policies with respect to risk assessment and risk management. Nasdaq-listed companies are not subject to a comparable requirement. *See* Appendix. *See* 2011 ABA Guidebook at 33 ("Risk management is a particularly salient issue for directors today and a significant part of the directors' duty of oversight of the business and affairs of the corporation. Effective risk management requires directors to assess the corporation's programs designed to address risks with respect to both strategic and compliance aspects. The board's role is one of forward-looking risk management, involving overseeing and assessing programs and ensuring that management is implementing programs that effectively manage risk.") 2013 NACD Survey at 31 (73.7% of companies have adopted a formal statement concerning the acceptable level of risk the company will tolerate.), *id.* at 32 (The majority of tasks directly related to the oversight of risk are assigned to the audit committee at 45.6% of companies, the full board at 37.7% of companies, the risk committee at 11.3%, the nominating/governance committee at 1.6%, and other committees at 3.9%.).

VII.H. Risk Management and Oversight				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
[E]nsure companies adopt policies, operating procedures, reporting, and decisionmaking protocols to effectively manage, evaluate, and mitigate risk.… a. The board is ... responsible for a company's risk management philosophy, organizational risk framework and oversight. [Directors should] understand and question the breadth of risks faced[, prioritize risk] and [devote] sufficient time … to oversight. b. [P]romote a risk-focused culture and [use] a common risk management framework … across the entire organization[, with] [f]requent and meaningful communication …. A robust risk framework will facilitate communication across business units, up the command chain and to the board. c. The board should set out specific risk tolerances and implement a dynamic process that continuously evaluates and prioritizes risks[, considering] … both internal … risks such as operational, financial, credit, liquidity, corporate governance, environmental, reputational, social, and external risks such as industry related, systemic, and macro economic. d. Executive compensation practices should be evaluated to ensure alignment with the company's risk tolerances and that compensation structures do not encourage excessive risk taking. e. At least annually, the board should approve a documented risk management plan and disclose sufficient information to enable shareowners to assess whether the board is carrying out its risk oversight responsibilities. Disclos[e] the role of external parties … in the risk management process. f. While the board is ultimately responsible for risk oversight, executive management should be charged with designing, implementing and maintaining an effective risk program. Roles and reporting lines related to risk management should be clearly defined. At a minimum, the roles and reporting lines should be explicitly set out for the board [and senior executives]. The board and risk related committees should have appropriate transparency and visibility into the organization's risk management practices ... (III.B.5)	The board has ultimate responsibility for risk oversight. The board should (1) establish a company's risk management philosophy and risk appetite; (2) understand and ensure risk management practices for the company; (3) regularly review risks in relation to the risk appetite; and (4) evaluate how management responds to the most significant risks. In determining the risk profile, the board should consider the dynamics of the company, its industry and any systemic risks. Council policies on other critical corporate governance matters, such as executive compensation . . . reinforce the importance of the board's consideration of risk factors. Effective risk oversight requires regular, meaningful communication between the board and management, among board members and committees, and between the board and any outside advisers it consults, about the company's material risks and risk management processes. The board should disclose to shareowners, at least annually, sufficient information to enable them to assess whether the board is carrying out its oversight responsibilities effectively. (§ 2.7)	The Audit Committee oversees the company's accounting, compliance and in most cases risk management practices. (p. 19) Each committee charter should specifically identify the role the committee plays in the overall risk management structure of the board. When a company faces numerous or acute risks, financially or operationally, the board should disclose why the current risk management structure is appropriate. (p. 20) Compensation should include a mixture of cash and equity that is appropriate based on the company's compensation philosophy without incentivising excessive risk. (p. 21)	Particular care must be taken to ensure that executive compensation does not create incentives for executives to take on excessive risk or make short-term decisions that are detrimental to long-term investors (Guideline IV.C) The trustees generally support enhanced disclosure to shareholders on how the company addresses issues that may present a significant risk to long-term corporate value. For example, these proposals may call for greater board oversight or a report to shareholders on risk management. (Guideline IV.F.7)	<u>Proxy Voting Guidelines</u> Under extraordinary circumstances, vote AGAINST or WITHHOLD from directors individually, committee members, or the entire board, due to [among other factors,] [m]aterial failures of governance, stewardship, risk oversight, or fiduciary responsibilities at the company. (p. 12) Examples of failure of risk oversight include, but are not limited to: bribery; large or serial fines or sanctions from regulatory bodies; significant adverse legal judgments or settlements; hedging of company stock; or significant pledging of company stock [by directors and/or executives]. (footnote 3, p. 12) <u>QuickScore</u> *Not directly covered but see* Question 14 (An independent Chairman of the Board . . . promotes oversight of risk . . . .)

VIII. PROTECTION AGAINST BOARD ENTRENCHMENT

Governance structures and practices should encourage the board to refresh itself.

The board needs to ensure that it is positioned to change and evolve with the needs of the company. This requires that directorship never be viewed as a sinecure. Some boards rely on age limits and/or term limits to assist in moving directors off the board. Some boards also require directors to offer their resignation upon a significant change in job responsibility. These mechanisms do not substitute for evaluating the contributions of individual directors in the context of re-nomination determinations and, in appropriate circumstances, determining not to renominate based on the evolving needs of the company or underperformance by the director.

In addition, the board and its committees should conduct self-evaluations periodically in the interest of continual self-improvement. Such self-evaluations do not need to be unduly complicated, but should provide an opportunity for the board and its committees to reflect and should culminate in a significant discussion about areas for further effort and improvement. Board policies regarding the conduct of evaluations should be disclosed.

As fiduciaries, boards need the ability to negotiate regarding takeover approaches, and anti-takeover defenses are important in providing negotiating leverage. At the same, time boards should understand that many shareholders view anti-takeover devices as unduly protective of the status quo. Boards should give careful consideration to whether anti-takeover devices are in the best long-term interests of the company. If the board adopts an anti-takeover measure, it should take special care to communicate to shareholders the reasons why, in its considered viewpoint, the measure is in the best interests of the company, and it may wish to consider providing shareholders with the opportunity to ratify within a reasonable time frame.

VIII.A. Term Limits, Mandatory Retirement & Changes in Job Responsibility[45]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered directly, but see § 3A.04, Comment e (The nominating committee may also perform other functions . . . [such as] the recommendation of policies on . . . continuation on the board. . . . Criteria for continuation on the board might include such elements as age . . . .).	The board . . . should plan ahead for director departures, considering whether it is appropriate to establish or maintain procedures for the retirement or replacement of board members, such as a mandatory retirement age or term limits. The board should assess whether other practices, such as the assessment of director candidates in connection with the renomination process, annual board evaluations and individual director evaluations, may make a retirement age or term limit unnecessary. Many boards also establish a requirement that directors who change their primary employment tender a board resignation, providing an opportunity for the board to consider the desirability of their continued service in light of their changed circumstances. (p. 14)	Boards should consider whether a change in an individual's professional responsibilities directly or indirectly impacts that person's ability to fulfill his or her directorship obligations. To facilitate the board's consideration: Boards should require that the CEO and other inside directors submit a resignation as a matter of course upon retirement, resignation, or other significant change in their professional roles and responsibilities. Boards should require that all directors submit a resignation as a matter of course upon retirement, a change in employer, or other significant changes in their professional roles and responsibilities. If the board determines that a director continues to make a contribution to the organization, the Commission supports the continued membership of that director on the board. (p. 12) Until . . . processes are established [for a strong individual director evaluation process], boards should recognize that when certain predetermined criteria are met – for example, 10 to 15 years of service or a specified retirement age – it may be desirable to promote director turnover to obtain the fresh ideas and critical thinking that a new director can bring to the board. However – for the sake of continuity – some directors' tenures should survive that of the CEO. Unless boards have a process to evaluate the performance of individual directors, they should establish tenure conditions under which, as a matter of course, directors should submit a resignation for consideration or offer to withdraw from consideration for renomination. (p. 12)	*Not covered.*	*Not covered.*

[45] *See* 2011 ABA Guidebook at 100 ("Boards handle the sensitive issue of board succession, including underperforming directors, in a variety of ways. Many boards attempt to deal with the issue indirectly through the adoption of mandatory retirement policies, but these policies can create an expectation that board service continues until retirement. In fact, a well-functioning nominating committee should be able to decline to nominate incumbents for reelection as individual situations dictate."); 2013 NACD Survey at 25 (49.7% of respondents used age as a tenure-limiting mechanism in 2013, compared to 53% in 2012 and 48.4% in 2011. On boards that use age limits, 72 years is the most often established age. 31.1% of respondents report requiring directors to resign upon a change of professional status. 7.7% use term limits, and 2% use other tenure-limiting mechanisms.); 2013 Spencer Stuart Board Index at 15 (3% of S&P 500 boards specify term limits in their corporate governance guidelines. 65% explicitly state they do not have term limits and 32% do not mention term limits at all. Of the 16 boards that do specify term limits, four set the cap at 15 years, four at 12 years and two at 10 years. The longest term limit is 30 years and no term limit is less than 10 years.); *id.* at 16 (72% of S&P 500 boards set a mandatory retirement age for directors. Of these 356 boards, 24% set it at 75 or older and 88% have a retirement age of 72 or older.).

VIII.A. Term Limits, Mandatory Retirement & Changes in Job Responsibility				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Generally, a company's retiring CEO should not continue to serve as a director on the board and at the very least be prohibited from sitting on any of the board committees. (III.B.1.6) With each director nomination recommendation, the board should consider the issue of continuing director tenure, as well as board diversity, and take steps as necessary to ensure that the board maintains openness to new ideas and a willingness to critically re-examine the status quo. (III.B.2.2.c)	*Not covered.*	Although TIAA-CREF does not support arbitrary limits on the length of director service, we believe boards should establish a formal director retirement policy. A director retirement policy can contribute to board stability, vitality and renewal. (p. 16)	The voting fiduciary should vote against proposals to limit terms of directors because they may result in prohibiting the service of directors who significantly contribute to the company's success and represent shareholders' interests effectively. (Guideline IV.A.11)	<u>Proxy Voting Guidelines</u> [D]irectors should not be constrained by arbitrary limits such as age or term limits. (p. 10) Vote AGAINST . . . proposals to limit the tenure of outside directors through mandatory retirement ages. (p. 17) Vote AGAINST . . . proposals to limit the tenure of outside directors through term limits. However, scrutinize boards where the average tenure of all directors exceeds 15 years for independence from management and for sufficient turnover to ensure that new perspectives are being added to the board. (p. 17) <u>QuickScore</u> *Not covered.*

VIII.B. Evaluating Board Performance[46]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
The board of directors has five primary functions, [one of which is to] evaluate board processes and performance. (§ 3.02, Comment a.4)	The board should have an effective mechanism for evaluating performance on a continuing basis. Meaningful board evaluation requires an assessment of the effectiveness of the full board, the operations of board committees and the contributions of individual directors. There are a variety of ways to conduct board and committee evaluations [including] written questionnaires, group discussions led by a designated director, employee or outside facilitator (often with the aid of written questions) and individual interviews. . . . Boards and committees should consider periodically varying the methods they use to keep the evaluation process fresh. • [T]he performance of the full board should be evaluated annually, as should the performance of its committees. The board should use the annual evaluation to assess whether it is functioning effectively and to discuss areas for improvement. Each committee should conduct an annual evaluation to assess its effectiveness, and to review the committee's charter to determine whether any changes are appropriate. The results of these evaluations should be reported to the full board. • Boards take a variety of approaches to assessing the contributions of individual directors. In this regard, board positions should not be regarded as permanent, and directors should serve only so long as they add value to the board. . . . Some boards also conduct individual director evaluations through a more formalized process that involves self or peer evaluations. (pp. 28-29)	There are three separate aspects to effective evaluation at the board level, each of which constitutes a critical component of board professionalism and effectiveness: CEO evaluation, board evaluation, and individual director evaluation. All three types of evaluation should be assessed vis-à-vis pre-established criteria to provide the CEO, the board as a whole, and each director with critical information pertaining to their collective and individual performance and suggested areas for improvement. Boards should regularly and formally evaluate the CEO, the board as a whole, and individual directors. Boards should ensure that independent directors create and control the methods and criteria for evaluating the CEO, the board, and individual directors. Such an evaluation practice will enable boards to identify and address problems before they reach crisis proportions. (p. 5) *See* Ch. 4, Evaluation: How Boards and Directors Should Be Judged, pp. 14-18; *and* Summary and Conclusion, pp. 20-21. *See also* Appendix E, Board Evaluation Practicalities: Creating a Board Self-Assessment Methodology. *See also* REPORT OF THE NACD BLUE RIBBON COMMISSION ON BOARD EVALUATION (2001) *and* REPORT OF THE NACD BLUE RIBBON COMMISSION ON PERFORMANCE EVALUATION OF CHIEF EXECUTIVE OFFICERS, BOARDS, AND DIRECTORS (1994).	Each board should develop a three-tier director evaluation process which includes evaluation of the performance of the board as a whole, the performance of each committee and the performance of each individual director, as necessary. The board should also adopt a process for review and evaluation of the Chief Executive Officer. (Part 2, Principle V) Depending on the corporate governance model adopted, boards should consider having the non-CEO Chairman, the Lead Independent Director (or equivalent designation) or the Presiding Director take a lead role, in conjunction with the Chairman, in the board evaluation process. (Part 2, Principle V, Best Practice 3) [E]valuation of directors should ensure that each director meets the board's qualifications for membership when the director is nominated or renominated to the board. . . . Beyond meeting baseline standards, evaluation can be a powerful tool for directors to improve their performance by understanding areas which require further development or training. (Part 2, Introduction at 21) *See* Part 3, Principle I, Best Practice 4 (Audit committees should conduct an annual assessment of the performance of the committee and its members, including in such review a comparison of the committee and its members to legal and stock exchange requirements and to prevailing best practices for audit committees.).	Independent board members . . . can bring an objective view to the evaluation of the performance of the board and management. (Annotation to Principle VI.E) In order to improve board practices and the performance of its members, an increasing number of jurisdictions are now encouraging companies to engage in board training and voluntary self-evaluation that meets the needs of the individual company. (Annotation to Principle VI.E.3)

[46] Under NYSE listing rules, domestic listed companies' boards are required to address annual performance evaluation in their corporate governance guidelines and the charters of the audit, compensation and nominating/corporate governance committees are required to provide for annual performance evaluations of these committees. There are no comparable requirements for Nasdaq-listed companies. *See* Appendix. *See* <u>2011 ABA Guidebook</u> at 54-55 ("Board and board committee self-evaluations are most effective when planned in advance, with participants having a clear idea of the purpose of the self-evaluation and the issues to be addressed…. The nominating/corporate governance committee generally conducts or supervises individual director evaluations. . . . "); <u>1994 NACD Report</u> at 13-14 ("Directors should evaluate board performance as a whole. Each board should consider developing goals for the board as a whole and for each of its committees . . . The board can then measure board, chairmen, and committee performance against these goals, position descriptions, and responsibilities, making any appropriate recommendations for improvement . . . The board should evaluate not just its process for nominating director candidates, but also its process for educating and renominating new directors. It should evaluate the evaluation process itself. The focus of the evaluation should also include some evaluation of individual director performance."); <u>2013 NACD Survey</u> at 22 (87.3% of survey respondents conduct full board evaluations, 73.6% conduct committee evaluations, and 37.8% conduct individual director evaluations.); <u>2013 Spencer Stuart Board Index</u> at 29 (2% of S&P 500 boards (versus 10% in 2008) do not conduct some kind of annual performance evaluation. 53% of those that undertake annual evaluations examine both the full board and individual committees, 9% evaluate only the full board (compared with 26% in 2008), and 33% evaluate individual directors as well as the board as a whole and its committees (compared with 17% in 2008).).

VIII.B. Evaluating Board Performance				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
No board can truly perform its function of overseeing a company's strategic direction and monitoring management's success without a system of evaluating itself. . . . Corporate boards should therefore have an effective means of evaluating itself and individual director performance. (III.B.2) The board establishes preparation, participation and performance expectations for itself (acting as a collective body), for the key committees and each of the individual directors. A process by which these established board, key committee and individual director expectations are evaluated on an annual basis should be disclosed to shareowners. Directors must satisfactorily perform based on the established expectations with re-nomination based on any other basis being neither expected nor guaranteed. (III.B.2.3) The independent chairperson [or lead director should] . . . [c]oordinate performance evaluations of the CEO, the board, and individual directors. (Appendix C)	Boards should review their own performance periodically. That evaluation should include a review of the performance and qualifications of any director who received "against" votes from a significant number of shareowners or for whom a significant number of shareowners withheld votes. (§ 2.8c) *See* § 1.5 (Shareowners should have . . . meaningful opportunities . . . to suggest processes and criteria for director . . . evaluation.).	The board should conduct an annual evaluation of its performance and that of its key committees. Evaluation criteria linked to board and committee responsibilities and goals should be set forth in the charter and governance policies. In addition to providing director orientation and education, the board should consider other ways to strengthen director performance, including individual director evaluations. (p. 18)	In voting on the entire board of directors, the voting fiduciary should consider the following factors: • Board Independence… • Long-term Performance… • Conduct of the Company… • Responsiveness to Shareholder Concerns… • Views of Other Important Corporate Constituents, Such As Employees and Communities (Guideline IV.A.1.1-1.5) In voting on individual directors, the voting fiduciary should consider the following factors: • Independence of Key Committees… • Performance of Key Committees… • Attendance Records of Incumbent Directors… • Director Service on Other Boards… • Director Performance on Other Boards . . . (Guideline IV.A.1.6-1.10)	<u>Proxy Voting Guidelines</u> Vote AGAINST or WITHHOLD from the entire board of directors (except new nominees, who should be considered on a CASE-BY-CASE basis), [if] . . . [t]he board lacks accountability and oversight, coupled with sustained poor performance relative to peers. Sustained poor performance is measured by one- and three-year total shareholder returns in the bottom half of a company's four-digit GICS industry group (Russell 3000 companies only). Take into consideration the company's five-year total shareholder return and five-year operational metrics. Problematic provisions include but are not limited to: • A classified board structure; • A supermajority vote requirement; • Either a plurality vote standard in uncontested director elections or a majority vote standard with no plurality carve-out for contested elections; • The inability of shareholders to call special meetings; • The inability of shareholders to act by written consent; • A dual-class capital structure; and/or • A non-shareholder-approved poison pill. (pp. 10-11) <u>QuickScore</u> *Not covered.*

VIII.C. Classified Boards, Cumulative Voting, Right to Call Special Meeting & Right to Act by Written Consent[47]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered.	*Not covered.*	*Not covered.*	*Not covered.*	Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly, and should have effective means of redress. . . . [C]ommon provisions to protect minority shareholders, which have proven effective, include . . . the possibility to use cumulative voting in electing members of the board. (pp. 41-42)

[47] In January 2012 (effective immediately), the NYSE eliminated broker discretionary voting with respect to corporate governance matters, for example, to de-stagger the board, adopt majority voting for director elections, eliminate supermajority voting requirements, provide for the use of consents, provide rights to call a special meeting, and adopt certain types of anti-takeover provision overrides. The Dodd-Frank Act requires national securities exchanges to prohibit member brokers from voting customer shares without instructions from the beneficial owner with respect to director elections (other than uncontested elections at registered investment companies), executive compensation and any other "significant matter," as determined by the SEC. *See* 2013 NACD Survey at 27("[53%] of companies put the entire board up for election annually. Larger companies are more likely to annually elect directors (72.6%) than are mid-size and smaller companies, which are evenly divided between staggered and annually elected boards."). 2013 Spencer Stuart Board Index at 12 (91% of S&P 500 boards have declassified structures, a notable increase from 83% in 2012.).

VIII.C. Classified Boards, Cumulative Voting, Right to Call Special Meeting & Right to Act by Written Consent				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Every director should be elected annually. (III.B.7.7) Shareowners should be able to call special meetings or act by written consent. (III.B.7.3) Shareholders should have the right to cumulate votes in a contested election of directors. (III.B.7.10)	All directors should be elected annually. Boards should not be classified (staggered). (§ 2.1) Shareowners should have the right to call special meetings. (§ 4.2)	TIAA-CREF believes that a company's charter or bylaws should dictate that directors be elected annually by a majority of votes cast. (p. 15) Directors should be elected annually by a majority rather than a plurality of votes cast. (p. 16) TIAA-CREF will generally support shareholder resolutions asking that each member of the board stand for re-election annually. (p. 30) TIAA-CREF will generally not support proposals asking that shareholders be allowed to cumulate votes in director elections, as this practice may encourage the election of "special interest" directors. (p. 31) TIAA-CREF will generally support shareholder resolutions asking for the right to call a special meeting. However, we believe a 25% ownership level is reasonable and generally would not be supportive of proposals to lower the threshold if it is already at that level. (p. 31) TIAA-CREF will consider on a case-by-case basis shareholder resolutions asking that they be granted the ability to act by written consent. (p. 32)	[C]lassified, or staggered term, boards may reduce the ability of shareholders to annually hold directors accountable versus the potential benefit of discouraging transactions that may be detrimental to the enhancement of long-term corporate value. (Guideline IV.A.4) The voting fiduciary's analysis must consider the fact that cumulative voting is a method of obtaining minority shareholder representation on a board and of achieving a measure of board independence from management control. Generally, the fiduciary should support shareholder proposals to restore cumulative voting and oppose management proposals to eliminate this feature. (Guideline IV.D.10) In analyzing proposals to limit or eliminate the right of shareholders to call special meetings and act by written consent, the voting fiduciary must weigh the fact that these rights may enhance the opportunity for shareholders to raise issues of concern with the board of directors against their potential for facilitating changes in control. Generally the fiduciary should oppose any attempts to limit and eliminate such rights if they already exist in a company's bylaws, and should support shareholder resolutions that seek to restore these rights. (Guideline IV.D.11)	<u>Proxy Voting Guidelines</u> Vote AGAINST or WITHHOLD from the entire board of directors (except new nominees, who should be considered on a CASE-BY-CASE basis), if [t]he board is classified, and a continuing director responsible for a problematic governance issue at the board/committee level that would warrant a withhold/against vote recommendation is not up for election. All appropriate nominees (except new) may be held accountable. (p. 10) Vote AGAINST [management] proposals to classify (stagger) the board. (p. 17) Vote FOR proposals to repeal classified boards and to elect all directors annually. (p. 17) Generally vote AGAINST . . . proposals to restrict or prohibit shareholders' ability to act by written consent [or call special meetings]. (p. 27) Generally vote FOR . . . proposals that provide shareholders with the ability to call special meetings [or act by written consent] taking into account [certain] factors . . . . (p. 28) *See* p. 18 *in relation to cumulative voting*. <u>QuickScore</u> Are all directors elected annually? . . . (Question 77) What is the percentage of share capital needed to convene a special meeting? . . . [T]he inability to call a special meeting and the resulting insulation of management may result in the decline of corporate performance and shareholder returns. (Question 97) Can shareholders act by written consent? Consent solicitations can be advantageous to both shareholders and management in that the process does not involve the expense of holding a physical meeting, and it is easier for shareholders who can simply respond to the proposal by mail . . . Limitations on written consent are clearly contrary to shareholder interests. . . (Question 98) Are there material restrictions as to timing or topics to be discussed, or ownership levels required to call [a special] meeting? . . . Material restrictions include: restrictions that prohibit special meetings more than 90 days away from the prior (or planned future) annual meeting date, restrictions that may be interpreted to preclude director elections or other significant business, and restrictions that effectively raise the ownership threshold required to call the meeting. (Question 225)

VIII.D. Poison Pills & Other Takeover Defenses[48]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
The board of directors, in the exercise of its business judgment, may approve, reject, or decline to consider a proposal to the corporation to engage in a transaction in control. (§ 6.01(a)) A transaction in control of the corporation to which the corporation is a party should require approval by the shareholders. (§ 6.01(b)) The board of directors may take an action that has the foreseeable effect of blocking an unsolicited tender offer, if the action is a reasonable response to the offer. (§ 6.02(a)) In considering whether its action is a reasonable response to the offer: (1) The board may take into account all factors relevant to the best interests of the corporation and shareholders, including, among other things, questions of legality and whether the offer, if successful, would threaten the corporation's essential economic prospects; and (2) The board may, in addition . . . have regard for interests or groups (other than shareholders) with respect to which the corporation has a legitimate concern if to do so would not significantly disfavor the long-term interests of shareholders. (§ 6.02(b)) *See* § 5.15, Transfer of Control in Which a Director or Principal Senior Executive Is Interested. *See generally* Part VI, Role of Directors and Shareholders in Transactions in Control and Tender Offers.	*Not covered.*	*Not covered.*	*Not covered.*	Markets for corporate control should be allowed to function in an efficient and transparent manner. 1. The rules and procedures governing the acquisition of corporate control in the capital markets, and extraordinary transactions such as mergers, and sales of substantial portions of corporate assets, should be clearly articulated and disclosed so that investors understand their rights and recourse. Transactions should occur at transparent prices and under fair conditions that protect the rights of all shareholders according to their class. 2. Anti-takeover devices should not be used to shield management and the board from accountability. (Principle II.E) In some countries, companies employ anti-takeover devices. However, both investors and stock exchanges have expressed concern over the possibility that widespread use of anti-takeover devices may be a serious impediment to the functioning of the market for corporate control. (Annotation to Principle II.E.2) *See* Annotation to Principle II.G ([C]o-operation among investors could also be used . . . to obtain control over a company without being subject to any takeover regulations. . . . For this reason, in some countries, the ability of institutional investors to cooperate on their voting strategy is either limited or prohibited.). *See also* Principle II.B (Shareholders should have the right to participate in, and to be sufficiently informed on . . . extraordinary transactions, including the transfer of all or substantially all assets, that in effect result in the sale of the company.).

[48] In January 2012 (effective immediately), the NYSE eliminated broker discretionary voting with respect to corporate governance matters, for example, to de-stagger the board, adopt majority voting for director elections, eliminate supermajority voting requirements, provide for the use of consents, provide rights to call a special meeting, and adopt certain types of anti-takeover provision overrides. The Dodd-Frank Act requires national securities exchanges to prohibit member brokers from voting customer shares without instructions from the beneficial owner with respect to director elections (other than uncontested elections at registered investment companies), executive compensation and any other "significant matter," as determined by the SEC.

VIII.D. Poison Pills & Other Takeover Defenses				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Every company should prohibit greenmail. (III.B.7.5) No board should enact nor amend a poison pill except with shareowner approval. (III.B.7.6)	Corporations should not adopt so-called "continuing director" provisions (also known as "dead-hand" or "no-hand" provisions, which are most commonly seen in connection with a potential change in control of the company) that allow board actions to be taken only by: (1) those continuing directors who were also in office when a specified event took place or (2) a combination of continuing directors plus new directors who are approved by such continuing directors. (§ 2.10) A majority vote of common shares outstanding should be required to approve . . . poison pills. (§ 3.6) Shareowners should be allowed to vote on unrelated issues separately. Individual voting issues (particularly those amending a company's charter, bylaws or anti-takeover provisions) should not be bundled. (§ 3.8)	Shareholders should have the right to approve any provisions that alter fundamental shareholder rights and powers. This includes poison pills and other antitakeover devices. We strongly oppose antitakeover plans that contain "continuing director" or "deferred redemption" provisions limiting the discretion of a future board to redeem the plan. We believe that antitakeover measures should be limited by reasonable expiration periods. (p. 10) Shareholders should have the right to approve the authorization of shares of common stock and the issuance of shares for corporate purposes in order to ensure that such actions serve a valid purpose and are consistent with shareholder interests. (p. 10) TIAA-CREF will consider on a case-by-case basis proposals relating to the adoption or rescission of antitakeover devices with attention to the following criteria: • Whether the company has demonstrated a need for antitakeover protection; • Whether the provisions of the device are in line with generally accepted governance principles; • Whether the company has submitted the device for shareholder approval; and • Whether the proposal arises in the context of a takeover bid or contest for control. TIAA-CREF will generally support shareholder resolutions asking to rescind or put to a shareholder vote antitakeover devices that were adopted without shareholder approval. (p. 32) TIAA-CREF will evaluate on a case-by-case basis proposals for reincorporation taking into account the intention of the proposal, established laws of the new domicile and jurisprudence of the target domicile. We will not support the proposal if we believe the intention is to take advantage of laws or judicial interpretations that provide antitakeover protection or otherwise reduce shareholder rights. (p. 32)	Directors . . . should be held accountable for . . . adopting anti-takeover provisions without shareholder approval . . . . (Guideline IV.A.1.3) Measures originally designed to protect companies from takeovers may also serve to entrench management. (Guideline IV.D) While the trustees support the legitimate use of shareholder rights plans, typically known as poison pills, the trustees believe shareholders should always be given the opportunity to vote on such plans. The voting fiduciary should oppose poison pill proposals by management that do not require management to submit the pill periodically, preferably every three years, to a shareholder vote, and should support shareholder proposals that ask a company to submit its poison pill for shareholder ratification. In evaluating any poison pill proposal, the voting fiduciary must consider the impact of acquisition attempts that may be detrimental to the enhancement of long-term corporate value and the failure of most mergers and acquisitions to enhance long-term corporate value. In addition, the voting fiduciary should . . . oppose any plan with a threshold of less than 20 percent of a company's shares. (Guideline IV.D.6) [G]reenmail discriminates against other shareholders and may result in decreased stock price. Where the voting fiduciary concludes that the greenmail payment lacks satisfactory long-term business justification (such as stopping an acquisition attempt that would be detrimental to the long-term economic best interests of plan participants and beneficiaries), the fiduciary must oppose the proposal. (Guideline IV.D.14) *See generally* Guideline IV.D, Corporate Governance and Changes in Control.	Proxy Voting Guidelines Vote AGAINST or WITHHOLD from the entire board of directors (except new nominees, who should be considered on a CASE-BY-CASE basis), if: . . . • The company's poison pill has a "dead-hand" or "modified dead-hand" feature. . . . • The board adopts a poison pill with a term of more than 12 months ("long-term pill"), or renews any existing pill . . . without shareholder approval. A commitment or policy that puts a newly adopted pill to a binding shareholder vote may potentially offset an adverse vote recommendation. Review such companies with classified boards every year, and such companies with annually-elected boards at least once every three years, and vote AGAINST or WITHHOLD votes from all nominees if the company still maintains a non-shareholder-approved poison pill; or • The board makes a material adverse change to an existing poison pill without shareholder approval. (pp. 10-11) Vote CASE-BY-CASE on all nominees if the board adopts a poison pill with a term of 12 months or less … without shareholder approval taking into account the following factors : the [pill] adoption [date] relative to the date of the next [shareholder] meeting …[and] the issuer's rationale[,]governance structure and practices[,] and … [shareholder] accountability [history]. (p. 11) *See* pp. 23-28 *in relation to shareholder proposals to put a pill to a vote and/or adopt a pill policy, management proposals to ratify a net operating loss pill, and other takeover defenses.* *See* Topic Heading VIII.B., *above*. QuickScore Does the company have a poison pill . . . in effect? Institutional investors view poison pills as among the most onerous of takeover defenses that may serve to entrench management and have a detrimental impact on their long-term share value. While recognizing that boards have a fiduciary duty to use all available means to protect shareholders' interests, investors often argue that, as a best governance principle, boards should seek shareholder ratification of a poison pill (or an amendment thereof) within a reasonable period. (Question 78) *See also* Questions 79-83, 91, 220, 222, 223 *in relation to poison pill provisions and blank check preferred stock.*

KEY AGREED PRINCIPLES

IX. SHAREHOLDER INPUT IN DIRECTOR SELECTION

Governance structures and practices should encourage meaningful shareholder involvement in the selection of directors.

Voting procedures for director elections should be designed to promote accountability to shareholders by providing shareholders a meaningful ability to elect or decline to elect directors in uncontested elections. Companies should adopt majority voting through appropriate provisions in articles of incorporation or bylaws (to the extent consistent with state law). In an uncontested election, a candidate who fails to win a majority of the votes cast should be required to tender his or her resignation, and the nominating/governance committee should recommend to the board whether to accept or reject the resignation, depending on the circumstances. (Any board decision not to accept the resignation of a director who has failed to receive a majority of the votes cast should be carefully thought out, and the explanation for such decision should be fully disclosed to shareholders.) In contested elections, directors should be elected by plurality voting.

Shareholders should have meaningful opportunities to recommend candidates for nomination to the board. The nominating/governance committee should disclose a process for considering shareholders' recommendations. Particular attention should be paid to a process for obtaining the views of long-term shareholders who hold a significant number of shares.

IX.A. Selecting & Inviting New Directors[49]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
The nominating committee should: (1) Recommend to the board candidates for all directorships to be filled by the shareholders or the board. (2) Consider, in making its recommendations, candidates for directorships proposed by the chief executive officer and, within the bounds of practicality, by any other senior executive or any director or shareholder. (§ 3A.04(b)) The board of directors has five primary functions, [one of which is to] [s]elect and recommend to shareholders for election an appropriate slate of candidates for the board of directors . . . . (§ 3.02, Comment a.4) [T]he purpose of § 1.34 [which defines "significant relationships" or impediments to director independence – *see* Topic Heading IV.B, *above*] is only to set forth minimum objective standards. These standards should then be complemented through a more individualized review by the nominating committee, which should attempt to make up a slate of directors that meets not only the letter but the spirit of § 3A.01 [that boards have a majority of directors free from any significant relationship with management]. (§ 3A.01, Comment d)	It is the responsibility of the board, through its corporate governance committee, to nominate directors and committee members and to oversee the composition, independence, structure, practices and evaluation of the board and its committees. (p. 10) *See* BUSINESS ROUNDTABLE, THE NOMINATING PROCESS AND CORPORATE GOVERNANCE COMMITTEES: PRINCIPLES AND COMMENTARY (April 2004).	Boards should establish a wholly independent committee that is responsible for . . . nominating directors for board membership. . . . (p. 3) Creating an independent and inclusive process for nominating . . . both directors and the CEO will ensure board accountability to shareholders and reinforce perceptions of fairness and trust between and among management and board members. (p. 4) Boards should involve all directors in all stages of the CEO and board member selection and compensation processes. (p. 4) Boards should institute as a matter of course an independent director succession plan and selection process, through a committee or overseen by a designated director or directors. (p. 5) In selecting members, the board must assure itself of [their] commitment to: • Learn the business of the company and the board • Meet the company's stock ownership requirements • Offer to resign on change of employment or professional responsibilities, or under other specified conditions, [and] • Devote the necessary time and effort. (p. 20) *See generally* Chapter 3, Selection: Who Directors Should Be, pp. 7-13.	[T]he nominating/governance committee should recommend to the full board of directors . . . an appropriate slate of qualified nominees for election to the board that they have identified and evaluated. (Part 2, Principle IV, Best Practice 1) Shareowners, particularly long-term shareowners, should act more like owners of the corporation. As shareowners, they should have the ability to participate more readily in the corporation's election process through involvement both in the nomination of directors and in proposals in the company's proxy statement about business issues and shareowner concerns regarding governance of the corporation. (Part 2, Principle VIII) Boards of directors should develop procedures to receive and to consider shareowners' nominations for the board of directors . . . . (Part 2, Principle VIII, Best Practice 1) The procedures for receiving shareowner nominations and proposals should include, where appropriate, meetings of shareowners with the nominating/governance committee or its representatives. (Part 2, Principle VIII, Best Practice 3)	Basic shareholder rights should include the right to . . . elect and remove members of the board . . . . (Principle II.A) The board should fulfill certain key functions, including . . . ensuring a formal and transparent board nomination and election process. (Principle VI.D.5) For the election process to be effective, shareholders should be able to participate in the nomination of board members and vote on individual nominees or on different lists of them. To this end, shareholders have access in a number of countries to the company's proxy materials which are sent to shareholders, although sometimes subject to conditions to prevent abuse. With respect to nomination of candidates, boards in many companies have established nomination committees to ensure proper compliance with established nomination procedures and to facilitate and coordinate the search for a balanced and qualified board. It is increasingly regarded as good practice in many countries for independent board members to have a key role on this committee. (Annotation to Principle II.C.3)

[49] On December 16, 2009, the SEC amended its rules to require disclosure, for each director and nominee, of the specific experience, qualifications, attributes or skills that led the board to conclude that the person should serve as a director of the company, in light of the company's business and structure, as well as whether and, if so, how the nominating committee considers diversity in identifying nominees for director. If the nominating committee or the board has a policy with regard to the consideration of diversity in identifying director nominees, the new rules require disclosure of how this policy is implemented and how the nominating committee or the board assesses the effectiveness of its policy. Under NYSE Listing Rules, domestic listed companies (subject to certain exemptions for "controlled companies") are required to have an independent nominating/corporate governance committee with a written charter setting forth the committee's purpose, which must include (i) identifying individuals who are qualified to become board members consistent with criteria that were approved by the full board, and (ii) selecting, or recommending that the board select, the director nominees for election at the next annual meeting of shareholders. Directors of Nasdaq-listed companies are required to be selected or recommended for the Board's selection either by independent directors constituting a majority of the board's independent directors or an independent nominations committee. *See* Appendix. *See* 2011 ABA Guidebook at 100 ("The nominating and governance committee approves and selects, or recommends that the board select, director nominees, including both incumbent directors and new candidates. The committee also recommends candidates to the board to fill interim director vacancies."); 1994 NACD Report at 10 (The Nominating Committee should evaluate the profile of the board and discuss it with the CEO and the rest of the board, forming a consensus on the number of additional directors to be added at the time and the ideal set of job skills. The Nominating Committee, with input from the entire board, should make a list of candidates. The CEO should have input into the process as well. Once a list of candidates has been established, the members of the Nominating Committee, the Chairman and CEO should meet with each candidate to evaluate his or her suitability. The Nominating Committee can recommend a candidate to the board, or the board as a whole make the selection, based on the Nominating Committee's advice.); 2013 NACD Survey at 28 (Respondents gave their views on what they considered to be the most important attributes when recruiting directors: financial expertise – 31.8%, specific industry experience – 31.1%, leadership experience – 29.1%, international/global experience – 16%, diversity – 15.6%, strategy development – 15.3%, corporate governance – 9.6%, technological expertise – 7.8%, information technology – 6.2%, marketing – 3.8%, risk assessment – 3.6%, government experience – 2.7%, medical/scientific expertise – 2.0%, legal expertise – 0.7%, and human resources – 0.4%).

IX.A. Selecting & Inviting New Directors				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
With each director nomination recommendation, the board should consider the issue of continuing director tenure, as well as board diversity, and take steps as necessary to ensure that the board maintains openness to new ideas and a willingness to critically reexamine the status quo. (III.B.2.2.c) Shareowners should have effective access to the director nomination process. (III.A.8) [The Independent Chair should] [i]nterview, along with the chair of the nominating committee, all board candidates, and make recommendations to the nominating committee and the board. (Appendix C: Independent Chair/Lead-Director Position Duty Statement)	Shareowners should have . . . meaningful opportunities to suggest or nominate director candidates and to suggest processes and criteria for director selection and evaluation. (§ 1.5) Boards should establish clear procedures to encourage and consider board nomination suggestions from long-term shareowners. The board should respond positively to shareowner requests seeking to discuss incumbent and potential directors. (§ 2.8a) *See* § 2.8d (Absent compelling and stated reasons, directors who attend fewer than 75 percent of board and board-committee meetings for two consecutive years should not be renominated.).	The Nominating and Governance committee oversees the company's corporate governance practices and the selection and evaluation of directors. (p. 19) Boards should establish and disclose the process by which shareholders can submit nominations to be considered by the board. If the nomination is not accepted, the board should communicate to that shareholder a reason for not accepting the nomination. (p. 17) *See also* Topic Heading III.A, *above*.	[K]ey [c]ommittees [include the] nominating committee . . . . (Guideline IV.A.1.6) The trustees support shareholder proposals to enhance the ability of long-term shareholders to cost-effectively nominate and elect directors to represent their interests, so long as these efforts do not provide a tool that can be used to facilitate hostile takeovers by short-term investors. (Guideline IV.A.7) *See generally* Guidelines IV.A.1, Election of Directors, *and* IV.A.2, Contested Election of Directors.	<u>Proxy Voting Guidelines</u> Vote AGAINST proposals that provide that only continuing directors may elect replacements to fill board vacancies. Vote FOR proposals that permit shareholders to elect directors to fill board vacancies. (p. 19) Vote AGAINST shareholder proposals that would require a company to nominate more candidates than the number of open board seats. (p. 21) <u>QuickScore</u> *Not covered directly, but see* Topic Heading IV.I., *above.*

IX.B. Majority Voting in Director Elections / Proxy Access / Advance Notice Bylaws[50]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered.	Directors should be elected by a majority vote. In addition, boards should adopt a resignation policy that requires a director who does not receive a majority vote to tender his or her resignation to the board for its consideration. [T]he board should think critically about the reasons why the director did not receive a majority vote and whether or not the director should continue to serve. Among other things, the board should consider whether the vote resulted from concerns about a policy issue affecting the board as a whole or concerns specific to the individual director. If the board decides not to accept a resignation, the corporation should disclose the reasons for this decision promptly. In addition, when a director is elected but receives significant "withhold" or "against" votes, the board should consider the reasons for the vote. (p. 13)	*Not covered.*	*Not covered.*	*Not covered.*

[50] Section 971 of the Dodd-Frank Act gave the SEC express discretionary authority to issue proxy access rules. Effective September 20, 2011, companies can no longer exclude from their proxy materials shareholder proposals (precatory or binding) relating to bylaw amendments establishing procedures for shareholder nomination of director candidates and inclusion in the company's proxy materials, as long as the proposal is not otherwise excludable under SEC rules. In January 2012 (effective immediately), the NYSE eliminated broker discretionary voting with respect to corporate governance matters, for example, to de-stagger the board, adopt majority voting for director elections, eliminate supermajority voting requirements, provide for the use of consents, provide rights to call a special meeting, and adopt certain types of anti-takeover provision overrides. The Dodd-Frank Act requires national securities exchanges to prohibit member brokers from voting customer shares without instructions from the beneficial owner with respect to director elections (other than uncontested elections at registered investment companies), executive compensation and any other "significant matter," as determined by the SEC. *See* 2011 ABA Guidebook at 112 ("Plurality voting is gradually losing ground as the predominant standard for uncontested director elections, as many boards, including a significant percentage of the Fortune 100, have adopted a majority voting standard."); 2013 NACD Survey at 41 (In the last 12 months, 23.1% of respondents adopted a majority voting policy in response to shareholder pressure or request); 2013 Spencer Stuart Board Index at 13 (84% of boards have adopted policies requiring directors who fail to secure a majority vote to offer their resignation, up from 56% in 2008.).

IX.B. Majority Voting in Director Elections / Proxy Access / Advance Notice Bylaws				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
In an uncontested director election, a majority of proxies cast should be required to elect a director. In a contested election, a plurality of proxies cast should be required to elect a director. Resignation for any director that receives a withhold vote greater than 50% of the votes cast should be required. Unless the incumbent director receiving less than a majority of the votes cast has earlier resigned, the term of the incumbent director should not exceed 90 days after the date on which the voting results are determined. (III.B.7.2) Shareowners should have effective access to the director nomination process. (III.A.8)	Directors in uncontested elections should be elected by a majority of the votes cast. In contested elections, plurality voting should apply . . . Directors who fail to receive the support of a majority of votes cast should step down from the board and not be reappointed. A modest transition period may be appropriate under certain circumstances, such as for directors keeping the company in compliance with legal or listing standards. But any director who does not receive the majority of votes cast should leave the board as soon as practicable. (§ 2.2) Companies should provide access to management proxy materials for a long-term investor or group of long-term investors owning in aggregate at least three percent of a company's voting stock, to nominate less than a majority of the directors. Eligible investors must have owned the stock for at least two years. Company proxy materials and related mailings should provide equal space and equal treatment of nominations by qualifying investors. To allow for informed voting decisions, it is essential that investors have full and accurate information about access mechanism users and their director nominees. Therefore, shareowners nominating director candidates under an access mechanism should adhere to the same SEC rules governing disclosure requirements and prohibitions on false and misleading statements that currently apply to proxy contests for board seats. (§ 3.2) Advance notice bylaws, holding requirements, disclosure rules and any other company imposed regulations on the ability of shareowners to solicit proxies beyond those required by law should not be so onerous as to deny sufficient time or otherwise make it impractical for shareowners to submit nominations or proposals and distribute supporting proxy materials. (§ 3.4)	TIAA-CREF believes that a company's charter or bylaws should dictate that directors be elected annually by a majority of votes cast. (p. 15) TIAA-CREF has adopted the following policy on director elections: 1. Directors should be elected annually by a majority rather than a plurality of votes cast. 2. In the election of directors, shareholders should have the right to vote "for," "against," or "abstain." 3. In any election where there are more candidates on the proxy than seats to be filled, directors should be elected by a plurality of votes cast. 4. Any incumbent candidate in an uncontested election who fails to receive a majority of votes cast should be required to tender an irrevocable letter of resignation to the board. The board should decide promptly whether to accept the resignation or to seat the incumbent candidate and should disclose the reasons for its decision. 5. Amendments to a company's director election standards should be subject to a majority vote of shareholders. Votes cast should include "withholds." Votes cast should not include "abstains," except that "abstains" should be counted as present for quorum. (p. 16) TIAA-CREF will generally support shareholder resolutions asking that companies amend their governance documents to provide for director election by majority vote. (p. 30) TIAA-CREF believes that shareholders should have the right to place their director nominees on the company's proxy and ballot in accordance with applicable law, or absent such law if reasonable conditions are met. The board should not take actions designed to prevent the full execution of this right. (p. 17)	The voting fiduciary should support proposals to require that director nominees shall be elected by the affirmative vote of the majority of votes cast at an annual meeting of shareholders. A plurality vote standard should be retained for contested director elections, that is, when the number of director nominees exceeds the number of board seats. A majority vote standard for uncontested director elections helps make directors more accountable to shareholders by giving shareholders a meaningful opportunity to vote against individual directors or the board as a whole. In contrast, under plurality voting in uncontested elections, director nominees may be elected by as little as one vote. (Guideline IV.A.6) The trustees support shareholder proposals to enhance the ability of long-term shareholders to cost-effectively nominate and elect directors to represent their interests, so long as these efforts do not provide a tool that can be used to facilitate hostile takeovers by short-term investors. Accordingly, [the] voting fiduciary should generally support shareholder proposals that provide shareholders access to the company proxy statement to advance non-management board candidates. Support for such proposals should be withheld if the access right could be used to promote hostile takeovers. (Guideline IV.A.7)	<u>Proxy Voting Guidelines</u> Generally vote FOR management proposals to adopt a majority of votes cast standard for directors in uncontested elections. Vote AGAINST if no carve-out for plurality in contested elections is included. (p. 20) Generally vote FOR … shareholder resolutions requesting that the board [adopt a majority voting standard], provided it does not conflict with [applicable] state law... Binding resolutions need to allow for a carve-out for a plurality vote standard when there are more nominees than board seats. Companies are strongly encouraged to also adopt a post-election policy …. (p. 21) Vote CASE-BY-CASE on proposals to enact proxy access, taking into account… company-specific …and proposal-specific factors, including • The ownership thresholds proposed in the resolution (i.e., percentage and duration); • The maximum proportion of directors that shareholders may nominate each year; and • The method of determining which nominations should appear on the ballot if multiple shareholders submit nominations. (p. 21) Vote CASE-BY-CASE on advance notice proposals, giving support to those proposals which allow shareholders to submit proposals/nominations as close to the meeting date as reasonably possible and within the broadest window possible, recognizing the need to allow sufficient notice for company, regulatory and shareholder review. To be reasonable, the company's deadline … must not be more than 60 days prior to the meeting, with a submittal window of at least 30 days prior to the deadline. (p. 23) <u>QuickScore</u> Does the company have a majority vote standard in uncontested elections? . . . The majority voting election standard (in uncontested elections), coupled with a post-election "director resignation policy" has emerged as the current best practice . . . (Question 52) If the company has a majority vote standard, is there a plurality carve-out in the case of contested elections? The absence of a carve-out for contested elections may serve as a takeover defense, since in a plurality election it is possible that no candidate will receive an absolute majority of votes, which is effectively a result in favor of incumbents. (Question 224)

KEY AGREED PRINCIPLES

X. SHAREHOLDER COMMUNICATIONS

Governance structures and practices should be designed to encourage communication with shareholders.

Shareholders have a legitimate interest in the governance of their companies. The fundamental role of shareholders in corporate governance is to elect directors capable of directing management in the best interests of the company and its shareholders. Receptivity to shareholder communications on topics relevant to board quality and accountability may prove beneficial in helping to improve mutual understanding while avoiding needless confrontation.

The board should carefully consider critical non-binding proxy proposals that attract significant support from shareholders. The board should take special care to ensure that it fully understands the issue and should communicate both with the proponent and the shareholders at large regarding the board's thinking on the matter. Such communication can be had through the proxy statement, annual report, annual meeting, and other meetings and correspondence with the proponent and other shareholders (subject to compliance with Reg FD).

Boards should also consider reaching out and developing stronger relationships with investors through candid and open dialogue. In particular, boards should consider ways to engage large long-term shareholders in dialogue about corporate governance issues and long-term strategy issues, recognizing that the board's fiduciary duties with respect to these issues mandate that the board exercise its own judgment.

Board communications with shareholders on these issues should involve one or more independent members of the board—usually the board chair, the lead director, or the appropriate committee chairs. In most instances, the CEO or other members of management should also participate. The board should establish processes for communications to ensure that any communications with shareholders are authorized by the board.

Executive compensation is an issue of particular concern for many shareholders. The board and the compensation committee should consider ways for shareholders to communicate their views and concerns regarding executive compensation, and should take these views and concerns into account, again recognizing that ultimately the board as fiduciary must make compensation decisions. Some boards may wish to consider seeking advisory shareholder votes on executive compensation, while some boards may explore other means of obtaining shareholder viewpoints.

The board should also consider ways to enhance the communication opportunity provided by the annual meeting, taking into account shareholders' expense and convenience when selecting the time, location, and mode of meetings (i.e. in-person meetings, meetings via electronic communication, or both). All directors should attend the annual meeting, and shareholders should have the opportunity to ask questions, subject to appropriate procedural rules (for example, those designed to ensure that a variety of shareholders can be heard from in the limited time available).

X.A. Board Interaction/Communication with Shareholders, Press, Customers, etc.[51]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered directly, but see § 5.01 (Directors, senior executives, and controlling shareholders, when interested in a matter affecting the corporation, are under a duty of fair dealing, which . . . includes the obligation to make appropriate disclosure . . . .).	[I]t is the responsibility of the corporation to engage with long-term shareholders in a meaningful way on issues and concerns that are of widespread interest to long-term shareholders, with appropriate involvement from the board of directors and management. (p. 3) The board should have an understanding of who the corporation's shareholders are and what their policies are on major [relevant] issues. (p. 23) Corporations should productively engage with their long-term shareholders in a manner consistent with the respective roles of the board, management and shareholders. Corporations should be responsive to issues and concerns that are of widespread interest to their long-term shareholders … [and] take steps to educate shareholders and other stakeholders about the board's role and its oversight responsibilities. Corporations should encourage shareholders to make voting decisions based on consideration of what is in the best interests of the individual corporation and its shareholders. Meaningful involvement of shareholders requires that shareholders make company-specific judgments and consider the interests of the specific corporation. … [A] corporation should consider additional outreach efforts as appropriate to explain the bases for the corporation's recommendations on the matters it is asking shareholders to vote on . . . [such as] periodic meetings with the corporation's large shareholders or other outreach to obtain feedback from long-term shareholders …. Corporations should carefully consider the views of shareholders, but keep in mind the duty of the board to act in what it believes to be the best interests of the corporation and all its shareholders. … Corporations should have effective procedures for long-term shareholders to communicate with [directors] and for directors to respond in a timely manner to [their] concerns. (pp. 30-31) *See also* Business Roundtable, GUIDELINES FOR SHAREHOLDER-DIRECTOR COMMUNICATIONS (May 2005).	*Not covered.* *See* REPORT OF THE NACD BLUE RIBBON COMMISSION ON BOARD-SHAREHOLDER COMMUNICATIONS (2008).	Company executives charged with communicating with shareowners, such as the Corporate Governance Officer, Corporate Secretary and Investor Relations Executives, should formulate and communicate to investors a strategy specifically designed to attract investors known to pursue long-term holding investment strategies (e.g., public and private pension funds and mutual funds that emphasize index strategies, money managers with stated long-term investment horizons, etc.). In this way, the corporation may be able to reduce the volatility in trading of its shares and build a stronger shareowner base. (Part 2, Principle IX, Best Practice 1) While corporations cannot dictate how investors make their decisions, they can provide them with information that is focused more on long-term strategies, financial goals, and intrinsic values, and less on transitory short-term factors. (Part 2, Principle IX, Best Practice 4) *See* Part 2, Principle IX, Best Practice 5 (Institutional investors should establish compensation arrangements for portfolio managers that reward a long-term rather than short-term focus.). *See also* Part 2, Introduction at 28 ([T]o the extent institutional investors – holding more than half of all equity securities of U.S. companies – are traders rather than owners, they . . . squander their potential influence on corporate management and policy.).	The exercise of ownership rights by all shareholders, including institutional investors, should be facilitated. (Principle II.F) Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users. (Principle V.E) The corporate governance framework should be complemented by an effective approach that addresses and promotes the provision of analysis or advice by analysts, brokers, rating agencies and others, that is relevant to decisions by investors, free from material conflicts of interest that might compromise the integrity of their analysis or advice. (Principle V.F) *See* Principle II.G (Shareholders, including institutional shareholders, should be allowed to consult with each other on issues concerning their basic shareholder rights as defined in the Principles, subject to exceptions to prevent abuse.).

[51] *See* 2011 ABA Guidebook at 28 ("Although a public company director may receive inquiries from major shareholders, media, analysts, or friends to comment on sensitive issues, individual directors should avoid responding to such inquiries, particularly when confidential or market-sensitive information is involved. Instead, they should refer requests for information to the CEO or other designated spokesperson."); *id.* at 110-111 ("Boards may . . . want to develop communication policies or protocols to promote dialogue with or facilitate receipt of input from shareholders. For example, shareholder groups may request an audience with the lead director, the independent directors, or an independent board committee to discuss various corporate governance issues and concerns. Boards need to consider appropriate policies to respond to such requests."); 2013 NACD Survey at 38 (When asked if board representatives have met with institutional investors in the past 12 months, 52.6% of survey participants said yes. 90.8% of board members surveyed agree or strongly agree that the board has a satisfactory relationship with long-term investors.).

X.A. Board Interaction/Communication with Shareholders, Press, Customers, etc.				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
The independent chairperson [or lead director should] . . . [b]e available for communication with shareowners. (Appendix C)	Directors should respond to communications from shareowners and should seek shareowner views on important governance, management and performance matters. To accomplish this goal, all companies should establish board-shareowner communications policies. Such policies should disclose the ground rules by which directors will meet with shareowners . . . Companies should also establish mechanisms by which shareowners with non-trivial concerns can communicate directly with all directors. Policies requiring that all director communication go through a member of the management team should be avoided unless they are for record-keeping purposes. In such cases, procedures documenting receipt and delivery of the request to the board and its response must be maintained and made available to shareowners upon request. Directors should have access to all communications. Boards should determine whether outside counsel should be present at meetings with shareowners to monitor compliance with disclosure rules. All directors should attend the annual shareowners' meetings and be available, when requested by the chair, to answer shareowner questions. (§ 2.6b) [Compensation] committee members should be available to respond directly to questions about executive compensation; the chair of the committee should take the lead. (§ 5.5f)	Shareholders should have the ability to communicate with the board of directors. Companies should adopt and disclose procedures for shareholders to communicate their views and concerns directly to board members. Applicable regulations aimed at preventing selective disclosure of material non-public information should not be used by boards and management as a shield to meaningful dialogue with shareholders. (p. 10) Annual meeting agendas and disclosure documents should be published in English, the generally accepted language of international business, whenever a company has accessed global capital. Shareholders should not be disenfranchised as a result of language barriers. (p. 10) Shareholders and boards should work together to develop constructive solutions to the risks posed by governance problems. Communication can be structured or unstructured or formal or informal, but whatever method is used, it should take place as necessary to ensure alignment and understanding of goals. (p. 12)	The trustees expect corporate boards to be composed of qualified individuals . . . who are open to shareholder input on issues facing the company . . . . (Guideline IV.A) Directors bear ultimate responsibility for the success or failure of the company, and should be held accountable for actions taken that may not be in the company's best long-term interests. Such actions may include . . . refusing to provide information to which the shareholders are entitled . . . . (Guideline IV.A.1.3) The voting fiduciary should support proposals that ask companies to prepare a report on or adopt a code of conduct on their operations in countries or regions with systemic labor and human rights violations. Taking such actions will help the company protect its corporate reputation and reduce its vulnerability to lawsuits from international human rights abuses. A board level review or report can shed needed light on a controversy and help investors to better understand the risks associated with a company's international operations. Examples of country specific standards that should be supported include the MacBride Principles for Northern Ireland and the Sullivan Principles for South Africa. (Guideline IV.E.3)	<u>Proxy Voting Guidelines</u> Generally vote FOR shareholder proposals requesting that the board establish an internal mechanism/process, which may include a committee, in order to improve communications between directors and shareholders, unless the company has the following features, as appropriate: • Established a communication structure that goes beyond the exchange requirements to facilitate the exchange of information between shareholders and members of the board; • Effectively disclosed information with respect to this structure to its shareholders; • Company has not ignored majority-supported shareholder proposals or a majority withhold vote on a director nominee; and • The company has an independent chairman or a lead director, according to ISS' definition. This individual must be made available for periodic consultation and direct communication with major shareholders. (p. 21) <u>QuickScore</u> *Not covered.*

X.B. Shareholder Meetings				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered.	Corporations should use the annual shareholder meeting as an opportunity to engage with shareholders. Directors should attend the corporation's annual meeting of shareholders, and the corporation should have a policy that directors attend the annual meeting each year, absent unusual circumstances. Time at the annual meeting should be set aside for shareholders to submit questions and for senior management or directors to respond to those questions. (p. 31)	*Not covered.*	[T]he Chair of the Compensation Committee should . . . be available at shareholders' meetings to respond directly to questions about executive compensation. (Part 1, Principle I, Best Practice 3)	Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings: 1. Shareholders should be furnished with sufficient and timely information concerning the date, location and agenda of general meetings, as well as full and timely information regarding the issues to be decided at the meeting. 2. Shareholders should have the opportunity to ask questions . . . to place items on the agenda . . . and to propose resolutions . . . . 4. Shareholders should be able to vote in person or in absentia . . . . (Principle II.C) Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders. Company procedures should not make it unduly difficult or expensive to cast votes. (Principle III.A.5)

X.B. Shareholder Meetings				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Not covered directly but see Topic Heading VIII.C, *above*.	All directors should attend the annual shareowners' meetings. . . . During the annual general meeting, shareowners should have the right to ask questions, both orally and in writing. Directors should provide answers or discuss the matters raised . . . . (§ 2.6b) Corporations should make shareowners' expense and convenience primary criteria when selecting the time and location of shareowner meetings. Appropriate notice of shareowner meetings . . . should be given . . . . (§ 4.1) Polls should remain open at shareowner meetings until all agenda items have been discussed and shareowners have had an opportunity to ask . . . questions . . . . (§ 4.5) Companies should not adjourn a meeting for the purpose of soliciting more votes…A meeting should only be extended for compelling reasons such as vote fraud, problems with the voting process or lack of a quorum. (§ 4.6) Companies should hold shareowner meetings by remote communication . . . only as a supplement to traditional in-person shareowner meetings, not as a substitute. Companies incorporating virtual technology should use it as a tool for broadening, not limiting shareholder meeting participation. [A] virtual option, if used, should facilitate the opportunity for remote attendees to participate in the meeting to the same degree as in-person attendees. (§ 4.7) *See* Topic Heading VIII.C, *above*.	As owners of equity securities, shareholders rely primarily on a corporation's board of directors to protect their interests. Unlike other groups that do business with the corporation (e.g., customers, suppliers and lenders), holders of common stock have no clear contractual protection of their interests. Instead, they place their trust in the directors, whom they elect, and use their right to vote at shareholder meetings to ensure the accountability of the board. (p. 9) Shareholders should expect robust disclosure on any item on which they are voting. In order to make informed decisions, shareholders should not be reliant on a third party to gather information from multiple sources. Companies should provide information on director qualifications, independence, affiliations, related party transactions, executive compensation, conflicts of interest and other relevant governance information. Additionally, companies should provide audited financial statements that are acceptable under international governance and accounting standards. (p. 11) *See* Topic Heading VIII.C, *above*.	Though shareholders generally have the right to attend corporate annual meetings in person, most individual shareholders who care to vote on corporate matters will do so by assigning their votes to someone else to cast in response to a proxy solicitation. The proxy voting process often amounts to little more than a formality, but in some cases corporations face real proxy contests in which shareholders give significant support to independent resolutions and candidates who challenge the incumbent management. (Guideline V.D.2) *See* Topic Heading VIII.C, *above*.	<u>Proxy Voting Guidelines</u> Generally vote AGAINST proposals to provide management with the authority to adjourn an annual or special meeting absent compelling reasons to support the proposal. Vote FOR proposals that relate specifically to soliciting votes for a merger or transaction if supporting that merger or transaction. Vote AGAINST proposals if the wording is too vague or if the proposal includes "other business." Vote AGAINST proposals to reduce quorum requirements for shareholder meetings below a majority of the shares outstanding unless there are compelling reasons to support the proposal. (p. 7) <u>QuickScore</u> *Not covered directly*. *See* Topic Heading VIII.C, *above*.

X.C. Board Responsiveness & Proxy Proposals Generally[52]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered.	The board or its corporate governance committee should oversee the corporation's response to shareholder proposals. The board should seriously consider issues raised by shareholder proposals that receive substantial support and should communicate its response to proposals to the shareholder-proponents and to all shareholders. (p. 31) *See* Topic Heading IX.B, *above*.	*Not covered.*	Shareowners, particularly long-term shareowners, should act more like owners of the corporation. As shareowners, they should have the ability to participate more readily in the corporation's election process through involvement both in the nomination of directors and in proposals in the company's proxy statement about business issues and shareowner concerns regarding governance of the corporation. (Part 2, Principle VIII) *See* Topic Heading X.F, *below*.	Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings: . . . 2. Shareholders should have the opportunity to ask questions . . . to place items on the agenda . . . and to propose resolutions . . . . 3. Effective shareholder participation in key corporate governance decisions, such as the nomination and election of board members, should be facilitated. Shareholders should be able to make their views known on the remuneration policy . . . . The equity component of compensation schemes . . . should be subject to shareholder approval. (Principle II.C)

[52] For the 2010 proxy season, the NYSE eliminated broker discretionary voting in uncontested director elections, as it had done some years earlier on compensation plans involving share issuances. In January 2012 (effective immediately), the NYSE eliminated broker discretionary voting with respect to corporate governance matters, for example, to de-stagger the board, adopt majority voting for director elections, eliminate supermajority voting requirements, provide for the use of consents, provide rights to call a special meeting, and adopt certain types of anti-takeover provision overrides. The Dodd-Frank Act requires national securities exchanges to prohibit member brokers from voting customer shares without instructions from the beneficial owner with respect to director elections (other than uncontested elections at registered investment companies), executive compensation and any other "significant matter," as determined by the SEC.

X.C. Board Responsiveness & Proxy Proposals Generally				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Shareowners should have the right to sponsor resolutions. A shareowner resolution that is approved by a majority of proxies cast should be implemented by the board. (III.B.7.4) *See* Topic Heading IX.B, *above*.	Boards should take actions recommended in shareowner proposals that receive a majority of votes cast for and against. (§ 2.6a) Advance notice bylaws, holding requirements, disclosure rules and any other company imposed regulations on the ability of shareowners to solicit proxies beyond those required by law should not be so onerous as to deny sufficient time or otherwise make it impractical for shareowners to submit nominations or proposals and distribute supporting proxy materials. (§ 3.4) *See* Topic Heading IX.B, *above*.	Whenever a company is the subject of a shareholder engagement initiative or resolution, the appropriate committee should review the matter and the proposed management response. (p. 20) *See* Topic Heading IX.B, *above*.	The fiduciary may wish to withhold votes from directors who fail to implement an appropriate proposal (one that is in the long- term interests of shareholders and is consistent with these Guidelines) that has been approved by a majority of shareholders in the past 12 months. To the extent that the information is available to the voting fiduciary, the fiduciary may take into account whether the company has taken, or has agreed to take, other actions to address the underlying concern raised by the proposal or has provided a persuasive explanation to shareholders for its rationale for not implementing the action called for by the proposal. (Guideline IV.A.1.4) *See* Topic Heading IX.B, *above*.	Proxy Voting Guidelines Generally vote for director nominees, except under the following circumstances: Vote CASE-BY-CASE on individual directors, committee members, or the entire board of directors as appropriate if: • The board failed to act on a shareholder proposal that received the support of a majority of the shares cast in the previous year. Factors that will be considered are: o Disclosed outreach efforts by the board to shareholders in the wake of the vote, o Rationale provided in the proxy statement for the level of implementation, o The subject matter of the proposal, o The level of support for and opposition to the resolution in past meetings, o Actions taken by the board in response to the majority vote and its engagement with shareholders, o The continuation of the underlying issue as a voting item on the ballot (as either shareholder or management proposals), and o Other factors as appropriate; • The board failed to act on takeover offers where the majority of shares are tendered; • At the previous board election, any director received more than 50 percent withhold/against votes of the shares cast and the company has failed to address the issue(s) that caused the high withhold/against vote; • The board implements an advisory vote on executive compensation on a less frequent basis than the frequency that received a plurality, but not a majority, of the votes cast at the most recent shareholder meeting at which shareholders voted on the say-on-pay frequency … ; (2014 Updates, p. 5) QuickScore How many directors received withhold/against votes of 50% or greater at the last annual meeting? . . . (Question 49) Has the board failed to implement a shareholder resolution supported by a majority vote? Directors should be responsive to the company's owners, particularly in regard to shareholder proposals that receive a majority vote. (Question 99) *See* Topic Headings IX.B, *above and* X.D, *below*.

X.D. Shareholder Advisory Votes on Executive Compensation[53]				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered.	[A] corporation should consider additional outreach efforts as appropriate to explain the bases for the corporation's recommendations on the matters it is asking shareholders to vote on, including advisory votes on executive compensation. (p. 30) *See* p. 24 (The compensation committee should oversee the corporation’s disclosures with respect to executive compensation and its shareholder advisory vote on executive compensation. … [T]he committee should use the compensation discussion & analysis (CD&A) disclosure to provide shareholders with meaningful and understandable information about …the impact of the corporation’s most recent shareholder advisory vote on executive compensation.)	*Not covered.*	*Not covered.*	Shareholders should be able to make their views known on the remuneration policy for board members and key executives. (Principle II.C.3) Although board and executive contracts are not an appropriate subject for approval by the general meeting of shareholders, there should be a means by which they can express their views. Several countries have introduced an advisory vote which conveys the strength and tone of shareholder sentiment to the board without endangering employment contracts. (Annotation to Principle II.C.3)

[53] The Dodd-Frank Act requires companies to provide for an advisory shareholder vote on executive compensation, which must occur every one, two or three years (as determined by shareholders at least once every six years). For the 2010 proxy season, the NYSE eliminated broker discretionary voting in uncontested director elections, as it had done some years earlier on compensation plans involving share issuances. The Dodd-Frank Act requires national securities exchanges to prohibit member brokers from voting customer shares without instructions from the beneficial owner with respect to director elections (other than uncontested elections at registered investment companies), executive compensation and any other “significant matter,” as determined by the SEC.

X.D. Shareholder Advisory Votes on Executive Compensation				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
Companies are recommended to submit executive compensation policies to shareowners for non-binding approval on an annual basis. (III.B.3.1.c) *See* Topic Heading VII.E, *above*.	All companies should provide annually for advisory shareowner votes on the compensation of senior executives. (§ 5.2) Shareowners should ratify all employment contracts, side letters or other agreements providing for severance, change-in-control or other special payments to executives exceeding 2.99 times average annual salary plus annual bonus for the previous three years. (§ 5.13f) *See* Topic Heading VII.E, *above*.	Shareholders should strive to provide thoughtful feedback to companies through engagement, proxy votes, investor policy statements and advisory votes on compensation. (p. 8) TIAA-CREF prefers that companies offer an annual non-binding vote on executive compensation ("say on pay"). In absence of an annual vote, companies should clearly articulate the rationale behind offering the vote less frequently. We will consider on a case-by-case basis advisory vote on executive compensation proposals with reference to our compensation disclosure principles noted in Section IV of this Policy Statement. (p. 20) TIAA-CREF will vote on a case-by-case basis on golden parachutes proposals taking into account the structure of the agreement and the circumstances of the situation. However, we would prefer to see a double trigger on all change of control agreements. (p. 20) *See* Topic Heading VII.E, *above.*	[C]ompanies must give their shareholders a say-on-pay advisory vote on executive compensation at least every three years. Say-on-pay votes give shareholders meaningful input on a company's approach to executive compensation without entangling them with the micromanagement of specific plans. The voting fiduciary should consider [various] factors when considering whether or not to approve a company's advisory vote on executive compensation[, including pay-for-performance, poor pay practices, equity compensation plan manipulation, stock ownership and clawback requirements, pay reasonableness, complexity and disclosure]. (Guideline IV.C.1) At least every six years, shareholders are asked to express their preference on whether a say-on-pay vote should be held every one year, every other year, or every third year. …An annual say-on-pay vote gives shareholders the opportunity to provide annual feedback to the board of directors on the company's executive compensation plan [but] a longer time period between say-on-pay votes may better align say-on-pay votes with long-term executive compensation plans. (Guideline IV.C.2) [C]ompanies [are required to] submit their golden parachutes to an advisory shareholder vote. … Although as a general matter companies should provide severance payments to terminated employees, the voting fiduciary should oppose overly generous golden parachutes for senior executives. Abusive examples include golden parachutes that exceed 2.99 times annual compensation, contain tax gross-ups, or provide for the accelerated vesting of equity awards (however, pro-rata vesting of awards based on past service is acceptable). [O]ppose golden parachutes that are triggered before the transaction is completed, or if the payouts are not contingent on the executive's termination. (Guideline IV.C.3; *see also* Guideline IV.C.8) *See* Guideline IV.C. Executive and Director Compensation. *See also* Topic Heading VII.E, *above*.	<u>Proxy Voting Guidelines</u> Vote CASE-BY-CASE on the entire board if [t]he board implements an advisory vote on executive compensation on a less frequent basis than the frequency that received a plurality, but not a majority, of the votes cast at the most recent shareholder meeting at which shareholders voted on the say-on-pay frequency, taking into account: • The board's rationale for selecting a frequency that is different from the frequency that received a plurality; • The company's ownership structure and vote results; • ISS' analysis of whether there are compensation concerns or a history of problematic compensation practices; and • The previous year's support level on the company's say-on-pay proposal. (p. 13) Vote AGAINST . . . Management Say-on-Pay. . . if: • There is a significant misalignment between CEO pay and company performance . . . ; • The company maintains significant problematic pay practices; • The board exhibits a significant level of poor communication and responsiveness to shareholders. (p. 38) Vote FOR annual advisory votes on compensation, which provide the most consistent and clear communication channel for shareholder concerns about companies' executive pay programs. (p. 41) <u>QuickScore</u> *Not covered*. *See* Topic Heading VII.E, *above*.

X.E. Independent Auditor Ratification				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
Not covered.	*Not covered.*	*Not covered.*	*Not covered.*	It is increasingly common for external auditors to be recommended by an independent audit committee of the board or an equivalent body and to be appointed either by that committee/body or by shareholders directly. (Annotation to Principle V.C) *See* Topic Heading IV.L, *above*.

X.E. Independent Auditor Ratification				
CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
The selection of the independent external auditor should be ratified by shareowners annually. (III.B.4.4) *See* Topic Heading IV.L, *above*.	Audit committee charters should provide for annual shareowner votes on the board's choice of independent, external auditor. (§ 2.13f) *See* Topic Heading IV.L, *above*.	TIAA-CREF will generally support the board's choice of auditor and believe we should be able to do so annually. However, TIAA-CREF will consider voting against the ratification of an audit firm where non-audit fees are excessive, where the firm has been involved in conflict of interest or fraudulent activities in connection with the company's audit, or where the auditors' independence is questionable. (p. 31) *See* Topic Heading IV.L, *above.*	The voting fiduciary should consider voting against ratification of the auditors when: • there is reason to believe that the company's auditors have become complacent in the performance of their auditing duties; • there has been a change in auditors from the prior years and it is determined that the cause is a disagreement between the company and the terminated auditor on a matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure[;] • the auditor provides advice on tax avoidance strategies, as disclosed in the qualitative discussion of tax services, or any other tax or other service that the voting fiduciary believes places the auditor in the role of advocate for the company or its executives; • the fees for non-audit services (audit-related, tax services and all other fees) account for a significant percentage of total fees. The voting fiduciary should be concerned when fees for nonaudit services are more than 20% of the total fees received by the auditor, and non-audit fees that exceed 50% of total fees are a serious threat to auditor independence. In determining the appropriate threshold at a particular company, the voting fiduciary should consider the nature of the non-audit services provided (e.g. any level of "all other fees" is considered problematic) and the level of detail provided in the qualitative descriptions of non-audit fees; or • a company has had the same audit firm for more than 7 years. (Guideline IV.B.1) *See* Topic Heading IV.L, *above*.	<u>Proxy Voting Guidelines</u> Vote FOR proposals to ratify auditors, unless . . . : • An auditor has a financial interest in or association with the company . . . ; • There is reason to believe that the independent auditor has rendered an opinion which is neither accurate nor indicative of the company's financial position; • Poor accounting practices are identified . . . ; or • Fees for non-audit services . . . are excessive. (p. 8) <u>QuickScore</u> *Not covered*. *See* Topic Heading IV.L, *above*.

X.F. Shareholder Voting Powers & Practices (Confidential Voting, Broker Non-Votes, One Share/One Vote)				
ALI Principles/Recommendations	BRT Principles	NACD Report	Conference Board Recommendations	OECD Principles/Millstein Report
A change in the corporation's charter documents that affects shareholders' rights of control of the corporation that is made by the board of directors is to be considered as having been approved by the shareholders if the shareholders have clearly empowered the board of directors to adopt the change or provision. (§ 1.02(c)) A transaction in control of the corporation to which the corporation is a party should require approval by the shareholders. (§ 6.01(b)) *See* § 5.11 (A controlling shareholder may not use corporate property, its controlling position, or (when trading in the corporation's securities) material non-public corporate information to secure a pecuniary benefit, unless: (1) Value is given for the use and the transaction meets the standards of § 5.10 (Transactions by a Controlling Shareholder with the Corporation), or (2) Any resulting benefit to the controlling shareholder either is made proportionately available to the other similarly situated shareholders or is derived only from the use of controlling position and is not unfair to other shareholders, and the use is not otherwise unlawful.).	Shareholders invest in a corporation by buying its stock and receive economic benefits in return. Shareholders are not involved in the day-to-day management of corporate operations but they have the right to elect representatives (directors) to look out for their interests and to receive the information they need to make investment and voting decisions. (p. 5) *See* Topic Heading IX.B, *above*.	*Not covered.*	Shareholders should have control over potential equity dilution resulting from compensation practices. (Part 1, Principle VI) Shareowner involvement in the corporation's governance is primarily through the corporate electoral process where shareowners are given the statutory right to vote on only a limited number of matters of significance to the corporation, including, for example, election of directors, mergers, and amendments to charter documents. (Part 2, Introduction at 24) Equity-based compensation should be made through plans approved by shareholders. Existing equity compensation arrangements should not be materially modified, including the repricing of options, without shareholder approval. (Part 1, Principle VI, Best Practice)	The corporate governance framework should protect and facilitate the exercise of shareholders' rights. A. Basic shareholder rights . . . include . . . : 1) secure methods of ownership registration; 2) convey or transfer shares; 3) obtain relevant and material information on the corporation on a timely and regular basis; 4) participate and vote in general shareholder meetings; 5) elect and remove board members; 6) share in the profits of the corporation. B. Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes . . . . C. Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern general shareholder meetings . . . (Principle II) The corporate governance framework should ensure the equitable treatment of all shareholders…. All shareholders should have the opportunity to obtain effective redress for violation of their rights. (Principle III) 1. All shareholders of the same series of a class should be treated equally. 2. Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders . . . and should have effective means of redress. 3. Votes should be cast by custodians or nominees in a manner agreed upon with the beneficial owner of the shares. 4. Impediments to cross border voting should be eliminated. 5. Processes and procedures for general shareholder meetings should allow for equitable treatment of all shareholders. Company procedures should not make it unduly difficult or expensive to cast votes. (Principle III.A) *See generally* II (The Rights of Shareholders and Key Ownership Functions), III (The Equitable Treatment of Shareholders), *and* Annotations on II, III. *See also* Topic Heading VIII.C, *above*.

X.F. Shareholder Voting Powers & Practices (Confidential Voting, Broker Non-Votes, One Share/One Vote)

CalPERS Principles	CII Policies	TIAA-CREF Policy Statement	AFL-CIO Voting Guidelines	ISS
All investors must be treated equitably and upon the principle of one-share/one-vote. (III.A.4) All shareowner votes, whether cast in person or by proxy, should be formally counted with vote outcomes formally announced. (III.A.5) Shareowner voting rights should not be subject to supermajority voting requirements. A majority of proxies cast should be able to: • Amend the company's governing documents such as the Bylaws and Charter by shareowner resolution. • Remove a director with or without cause. (III.B.7.1) In an uncontested director election, a majority of proxies cast should be required to elect a director. In a contested election, a plurality of proxies cast should be required to elect a director. (III.B.7.2) Proxies should be kept confidential from the company, except at the express request of shareowners. (III.B.7.8) Broker non-votes should be counted for quorum purposes only. (III.B.7.9) *See* Topic Headings VIII.C *and* IX.B, *above*.	A shareowners' right to vote is inviolate and should not be abridged. (§ 3.1) Each share of common stock should have one vote. Corporations should not have classes of common stock with disparate voting rights. Authorized, unissued preferred shares that have voting rights to be set by the board should not be issued without shareowner approval. (§ 3.3) All proxy votes should be confidential, with ballots counted by independent tabulators . . . . Rules and practices concerning the casting, counting and verifying of … votes should be clearly disclosed. (§ 3.5) A majority vote of common shares outstanding should be sufficient to amend company bylaws or take other action that requires or receives a shareowner vote. Supermajority votes should not be required. A majority vote of common shares outstanding should be required to approve: • Major corporate decisions concerning the sale or pledge of corporate assets that would have a material effect on shareowner value . . .; • [A]cquisition of five percent or more of its common shares at above-market prices other than by tender offer to all shareowners; • Poison pills; • Abridging or limiting the rights of common shares to: (1) vote on the [director] election[s, removal or] term of office or (2) nominate directors or propose other action to be voted on by shareowners or (3) call special meetings of shareowners or take action by written consent or change the procedure for fixing the record date for such action; and • Issuing [excessive] debt. (§ 3.6) • [Election of directors] (§ 2.2) Uninstructed broker votes and abstentions should be counted only for purposes of a quorum. (§ 3.7) Shareowners should … vote on unrelated issues separately. Individual voting issues… should not be bundled. (§ 3.8) *See* Topic Headings VIII.C *and* IX.B, *above*.	Generally, shareholders should have the right to vote in proportion to their economic stake in the company. Each share of common stock should have one vote. The board should not create multiple classes of common stock with disparate or "super" voting rights, nor should it give itself the discretion to cap voting rights that reduce the proportional representation of larger shareholdings. Companies that do not have a one-share-one-vote structure should periodically asses the efficacy of such a structure and provide shareholders with a rationale for maintaining [it]. (p. 9) All shareholders should receive fair and equal financial treatment. We support measures designed to avoid preferential treatment of any shareholder. (p. 9) Shareholders should be able to cast proxy votes in a confidential manner. Tabulation should be conducted by an [independent] Inspector of Election. (p. 10) The board should not impose super-majority vote requirements, except in unusual cases where necessary to protect … minority shareholders. Abstentions should not be included in the vote tabulation, except for [quorum] purposes... Shareholder votes cast "for" or "against" a proposal should be the only votes counted. The board should not combine or "bundle" disparate issues … for a single vote. (p. 10) Shareholders should … approve any provisions that alter fundamental shareholder rights and powers [including] antitakeover devices. (p. 10) Shareholders should be able to vote all their shares without impediments such as share blocking, beneficial owner registration, voting by show of hands, late notification of agenda items[, etc]. (pp. 9-11) Shareholders should have the ability to confirm that their votes have been received and tabulated. Shareholders are devoting …resources to making their voting decisions and should be able to know that they are not being lost in the system. (p. 11) [G[enerally support shareholder resolutions [eliminating] supermajority vote requirements [or] dual classes of common stock ... (p. 31) *See* Topic Headings VIII.C *and* IX.B, *above*.	The range of actions available to shareholders include . . . withholding votes or voting no on some or all of the uncontested management slate, meeting with management or director candidates and supporting shareholder resolutions designed to address these issues. Voting against a director nominee is one of the strongest means for shareholders to express dissatisfaction with a company's policies or with a particular director's accountability. (Guideline IV.A.1) [G]enerally oppose proposals by companies to reincorporate to jurisdictions that will result in a weakening of shareholder rights . . . . (Guideline IV.D.5) The voting fiduciary should review supermajority proposals on a case-by-case basis . . . . Generally, the trustees oppose management proposals to require a supermajority vote and support shareholder proposals to lower supermajority voting requirements. (Guideline IV.D.7) The trustees oppose any voting system that entrenches company management at the expense of shareholders. The voting fiduciary should generally oppose proposals that limit shareholder power by issuing dual class shares. In recognition of the beneficial role that long-term investors can play in strengthening a company's corporate governance and management accountability, proposals that seek to enhance the voting rights of long-term shareholders should be given favorable consideration. (Guideline IV.D.8) The right of employee and institutional shareholders to vote without pressure from management is crucial. The purpose of confidential voting is to protect shareholders from management pressure to change their votes before the shareholder meeting…. [S]upport shareholder proposals that seek greater confidential voting. (IV.D.9) The voting fiduciary should oppose management requests to approve other business [which] gives management broad authority to take action without shareholder consent . . . . (Guideline IV.D.15) *See* Guideline I, Trustee Policy Statement. *See also* Topic Headings VIII.C *and* IX.B, *above*.	<u>Proxy Voting Guidelines</u> Vote FOR shareholder proposals requesting that corporations adopt confidential voting, use independent vote tabulators, and use independent inspectors of election, as long as the proposal includes a provision for proxy contests . . . . Vote FOR management proposals to adopt confidential voting. (p. 23) <u>QuickScore</u> Does the company have classes of stock with different voting rights? Dual-class capital structures can serve to entrench certain shareholders and management, insulating them from possible takeovers or other external influence or action . . . (Question 54) Are there any directors . . . who are not up for election by all classes of common shareholders? Barring some holders of common stock from voting on directors may serve to entrench board members and perpetuate control by certain blocks or groups. (Question 55) Does the company require a super-majority vote to approve amendments to the charter and bylaws? . . (Question 89) Does the company require a super-majority vote to approve mergers/business combinations? Supermajority provisions violate the principle that a simple majority of voting shares should be all that is necessary to effect a merger. For companies that are controlled, however, supermajority provisions may help ensure that the controlling shareholder cannot unilaterally force a merger despite the opposition of minority shareholders. (Question 90) *See* Topic Headings VIII.C *and* IX.B, *above*.

Weil

Public Company Advisory Group

Requirements for Public Company Boards

Including IPO Transition Rules

October 2013

Introduction

The fiduciary duties of boards of directors are governed by the laws of the particular jurisdictions in which their companies are incorporated. However, since the early 2000s, in response to accounting scandals and the financial crisis, a considerable number of substantive governance and related disclosure requirements have been imposed on boards and board committees through federal legislation, implementing rules and stock exchange listing standards.

Some of these requirements may be phased-in by newly listed public companies.

For a summary of the transition rules, see "*IPO and Other Transitional Provisions: NYSE and Nasdaq.*"

The following table summarizes the requirements applicable to boards of directors of companies that have equity securities listed on the New York Stock Exchange (the "NYSE") or the Nasdaq Global Market ("Nasdaq"). The sources of these requirements are:

- the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Dodd-Frank"),
- the Sarbanes-Oxley Act of 2002, as amended ("SOX"),
- the Securities Exchange Act of 1934, as amended (the "Exchange Act"),
- rules of the U.S. Securities and Exchange Commission (the "SEC"), and
- the corporate governance listing standards of the NYSE and Nasdaq (the "Listing Standards"), which are very similar but not identical.

As noted in the table, certain of these requirements do not apply to "foreign private issuers" ("FPIs"),[1] "controlled companies,"[2] "smaller reporting companies,"[3] companies in bankruptcy proceedings,[4] limited partnerships,[5] investment companies registered under the Investment Company Act of 1940, as amended (the "ICA"),[6] cooperatives and passive investment entities such as royalty trusts and securitization vehicles.

The Role and Authority of Independent Directors

Requirement	NYSE	NASDAQ
Majority of Independent Directors	Independent directors must comprise majority of board.[7] *See "Definition of 'Independent' Director."*	Same requirement.[8]
Cure	No specific cure provisions. NYSE's general procedures for listing standard violations apply. *See "Enforcement, Notifications and Affirmations."*	At least 180-day cure period for failure to comply due to a board vacancy or because a director is no longer independent for reasons beyond the director's reasonable control, and must notify Nasdaq upon learning of non-compliance.[9] *See "Enforcement, Notifications and Affirmations."*
Executive Sessions	Non-management directors must meet in regularly scheduled executive sessions (without members of management present).[10] If these executive sessions include non-independent directors, an executive session with only independent directors must be scheduled at least once a year. Company may choose to hold regular sessions of independent directors only.[11]	Independent directors must meet regularly in executive session (without members of management present).[12] Executive sessions should occur at least twice a year.[13]
Presiding Directors	Non-management director must preside at executive sessions, although same director not required to preside at all executive sessions.[14] Name of director presiding at executive sessions, or procedure by which presiding director is selected for each executive session, must be disclosed on company's website or in proxy statement (or, if company does not file proxy statement, in company's annual report on Form 10-K), with information about how interested parties can communicate with presiding director or non-management directors as a group.[15]	Not addressed.
Exemptions	The following are not required to have a majority of independent directors or hold executive sessions: • controlled companies; • limited partnerships; • companies in bankruptcy proceedings; • ICA-registered management investment companies; • passive investment organizations in the form of trusts; • listed derivatives and special purpose securities; and • FPIs (*see "Applicability to Foreign Private Issuers"*).[16]	The following are not required to have a majority of independent directors or hold executive sessions: • limited partnerships; • ICA-registered management investment companies; • asset-backed issuers and other passive issuers; • cooperatives; and • FPIs (see *"Applicability to Foreign Private Issuers"*). Controlled companies are not required to have a majority of independent directors but are required to hold executive sessions.[17]

The Role and Authority of Independent Directors (continued)

Requirement	NYSE	NASDAQ

Independent Committees	Subject to applicable exemptions, board must have:
	• an independent audit committee;[18]
	• an independent compensation committee;[19] and
	• an independent nominating/corporate governance committee.[20]
		Subject to applicable exemptions, board must have:
		• an independent audit committee;[21]
		• independent director oversight of executive compensation:
		  ◦ CEO and executive officer compensation determined or recommended to board for approval by independent compensation committee or by majority of independent directors until earlier of first annual meeting after January 15, 2014, or October 31, 2014;[22] or
		  ◦ an independent compensation committee by earlier of first annual meeting after January 15, 2014, or October 31, 2014;[23] and
		• director nominees selected or recommended for board's selection by independent nominating committee or by majority of the independent directors.[24]

The Definition of "Independent" Director

Requirement	NYSE	NASDAQ
Definition	"Independent director" is one who board "affirmatively determines" has no "material relationship"[25] with company "either directly or as a partner, shareholder or officer of an organization that has a relationship with the company."[26] Definition applies for all purposes throughout NYSE listing standards. Additional restrictions apply to membership on the audit or compensation committee.	"Independent director" is one who is not an executive officer or employee of company,[27] and who, in the board's opinion, has no relationship which would "interfere with the exercise of independent judgment" in carrying out director responsibilities.[28] Definition applies for all purposes throughout Nasdaq listing standards. Additional restrictions apply to membership on the audit or compensation committee.
"Bright-line" Independence Disqualifications	• Director is, or has been within the last three years, an employee of company or an immediate family member[29] of director is, or has been within the last three years, an executive officer[30] of company;[31]	• Director is, or has been within the last three years, an employee of company, or a family member[37] is, or has been within the last three years, an executive officer[38] of company;[39]
	• Director has received, or has an immediate family member who is an executive officer of company and has received, during any twelve-month period within the last three years, more than $120,000 compensation directly from company (not including compensation received for director service, pension plan payments or deferred compensation for prior service not contingent on continued service);[32]	• Director accepts or a family member who is an executive officer of company accepts more than $120,000 compensation[40] from company during any twelve-month period within the last three years (not including compensation received for director service, tax-qualified retirement plan payments or other non-discretionary compensation for prior services rendered);[41]
	• Director or an immediate family member is a current partner of company's internal or external auditor; director is a current employee of the auditor; an immediate family member is a current employee of the auditor and personally works on company's audit; or director or an immediate family member was within the last three years a partner or employee of the auditor and personally worked on company's audit within that time;	• Director is, or a family member is, a current partner of company's outside auditor or was a partner or employee of company's outside auditor who worked on company's audit at any time during any of the past three years;
	• Director or an immediate family member is, or has been within the last three years, employed as an executive officer of another company where any of listed company's present executive officers at the same time serves or served on that company's compensation committee;[33] or	• Director or a family member is employed as an executive officer of another company where any of listed company's current executive officers during the past three years served on the compensation committee of such other company;[42] or
	• Director is a current employee,[34] or an immediate family member is a current executive officer, of an organization that has made to or received from the company payments for property or services in an amount which, in any of the last three fiscal years, exceeds greater of 2% of such other company's consolidated gross revenues or $1 million.[35] Charitable contributions not considered "payments" for purposes of this prohibition but contributions meeting these thresholds must be disclosed on company's website or in its annual proxy statement or annual report on Form 10-K.[36]	• Director or a family member is a partner in (but not a limited partner), or a controlling shareholder or an executive officer of an organization that has made to or received from the company payments for property or services in an amount which, in the current or any of the last three fiscal years, exceeds greater of 5% of recipient's consolidated gross revenues or $200,000.[43] Charitable contributions are considered "payments" for purposes of this prohibition.[44]
	See "Parent/Subsidiary Relationships and Shareholdings."	*See "Parent/Subsidiary Relationships and Shareholdings."*
Independence "Cooling Off" Period	Except for significant customer/supplier standard (described in fifth bullet immediately above), a three-year "cooling off" period applies to "bright-line" disqualification standards. No individual who has had such a relationship within "cooling off" period, or who is an immediate family member of an individual who had such a relationship, may be considered independent, even though he/she no longer has such relationship.[45]	Same requirement.

The Definition of "Independent" Director (continued)

Requirement	NYSE	NASDAQ
Parent/Subsidiary Relationships and Shareholdings	For purposes of applying "bright-line" standards of independence, a "parent company" of a listed company is considered as if it were the listed company. Company is considered the "parent company" of listed company if listed company and parent company are part of a consolidated group of companies for financial reporting purposes, as determined applying U.S. generally accepted accounting principles.[46] In relation to shareholding generally, "as the concern is independence from management, the Exchange does not view ownership of even a significant amount of stock, by itself, as a bar to an independence finding."[47]	Same requirement; however, a company is considered the "parent company" of a listed company if parent company controls listed company and consolidates in its financial reports the results of listed company.[48] In relation to shareholding generally, "[b]ecause Nasdaq does not believe that ownership of company stock by itself would preclude a board finding of independence, it is not included in the aforementioned objective ['bright-line'] factors."[49]
Director Independence Disclosure	Annual meeting proxy statement or annual report on Form 10-K must include disclosure relating to director independence, including transactions and arrangements considered by a board in assessing director independence.[50]	Same requirement.[51]

The Audit Committee

Requirement	NYSE	NASDAQ
Audit Committee	Company must have audit committee composed entirely of independent directors.[52]	Same requirement.[53]
Audit Committee Size	At least three members.[54]	Same requirement.[55]
Additional Independence Requirements for Audit Committee Members	In addition to the general NYSE independence requirements, audit committee member must meet the independence requirements enumerated in SOX Section 301 and Exchange Act Rule 10A-3(b)(1): • Director must not accept any direct or indirect consulting, advisory or other compensatory fee[56] from listed company other than compensation for director service; and • Director must not be "affiliated"[57] with company or its subsidiaries.[58]	Same requirement.[59] One director who meets SOX Section 301 independence criteria and is not a current officer, employee or family member of an officer but is otherwise not independent under Nasdaq's independence standards may serve on audit committee (of at least three members) for a period of no longer than two years but not as audit committee chair, if board of directors, under "exceptional and limited circumstances," determines that membership on committee by that person is in the "best interests of the company and its shareholders." Disclose reliance on this exception, nature of relationship and reasons for determination on company's website or in annual meeting proxy statement or annual report on Form 10-K.[60]
Cure	Member may remain on audit committee even if no longer independent for reasons beyond member's reasonable control until earlier of next annual shareholders meeting or one year from occurrence of event causing failure to comply.[61] Company must notify NYSE upon learning of non-compliance. *See "Enforcement, Notifications and Affirmations."*	Same requirement. In addition, if company fails to comply with requirement that audit committee have at least three members due to one vacancy on committee, company has at least 180 days to comply.[62]
Membership and Related Disclosures	Not addressed by NYSE. SEC Regulation S-K requires disclosure in proxy statement and annual report on Form 10-K of audit committee membership and various related information, as well as any reliance on exemptions from audit committee requirements.[63]	Not addressed by Nasdaq. Same requirement.
Financial Literacy/ Expertise Requirements	Must be financially literate, as determined by board, or must become financially literate within reasonable period of time following appointment. At least one committee member (who need not be committee chair) must have "accounting or related financial management expertise" in board's judgment. Board may presume that person who would be considered "audit committee financial expert" under SOX Section 407 has accounting or related financial management expertise.[64]	Must be able to read and understand fundamental financial statements, including company's balance sheet, income statement and statement of cash flows, at time of appointment. In addition, at least one committee member required to have had past employment experience in finance or accounting, professional certification in accounting or other comparable experience or background such as being or having been a chief executive officer, chief financial officer or other senior official with financial oversight responsibilities, that results in individual's financial sophistication.[65] Director who qualifies as "audit committee financial expert" under SOX Section 407 presumed to qualify as financially sophisticated audit committee member.[66]

The Audit Committee (continued)

Requirement	NYSE	NASDAQ
Disclosure of Audit Committee Financial Expert	Not addressed by NYSE. SEC Regulation S-K requires disclosure in annual reports whether or not audit committee includes at least one "audit committee financial expert" and, if not, reasons why not (subject to certain exceptions). An "audit committee financial expert" has an understanding of financial statements and generally accepted accounting principles ("GAAP"); experience in preparing, auditing, analyzing or evaluating financial statements of companies comparable to the company or experience in actively supervising one or more persons engaged in such activities; experience in applying GAAP to accounting for estimates, accruals and reserves; and an understanding of internal accounting controls, procedures for financial reporting and audit committee functions, as a result of: • education and experience as a public accountant, auditor, principal financial officer, controller or principal accounting officer of a company, or a position involving similar functions; • experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions; • experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or • other relevant experience.[67]	Not addressed by Nasdaq. Same requirement.
Service on Multiple Audit Committees	If audit committee member simultaneously serves on audit committees of more than three public companies, board must determine that such simultaneous service would not impair member's ability to effectively serve on company's audit committee and disclose that determination on company's website or in annual proxy statement or annual report on Form 10-K.[68]	Not addressed.
Authority Over Auditor Relationships	Must be directly responsible for appointing and terminating company's independent auditor(s) and have the other responsibilities and authority required by Rule 10A-3 (described below).[69]	Same requirement.[70]
Related Person/ Conflict of Interest Transactions	NYSE provides guidance on how boards should oversee related party transactions and endorses audit committee oversight.[71]	Related person transactions must receive appropriate review and oversight for potential conflict of interest situations on an "ongoing basis" by audit committee or another independent body of board.[72]
	Companies must adopt and disclose code of business conduct and ethics that should address, among other matters, conflicts of interest. Audit committee charters often give audit committee oversight responsibility with respect to code of conduct compliance by senior management. *See "Codes of Conduct and Ethics, and Corporate Governance Guidelines."*	Same requirement.
Internal Audit	Company must have internal audit function.[73] Audit committee must have oversight responsibility over internal audit.	Not addressed.

Requirement	NYSE	NASDAQ
Audit Committee Responsibilities and Charter	Written charter must address committee's purpose, which must include: (i) assisting board oversight of integrity of company's financial statements, company's compliance with legal and regulatory requirements, independent auditor's qualifications and independence, and performance of company's internal audit function and independent auditors; and (ii) preparing disclosure required by SEC Regulation S-K Item 407(d)(3)(i) (relating to audit committee report to be included in annual proxy statement).[74]	Written charter must specify: (i) scope and how it carries out responsibilities, including structure, processes and membership requirements; (ii) responsibilities for ensuring its receipt from outside auditors of written statement delineating all relationships between auditor and company, and responsibility for actively engaging in dialogue with auditor with respect to disclosed relationships or services that may impact auditor objectivity and independence and for taking, or recommending that full board take, appropriate action to oversee outside auditor independence; and (iii) committee's purpose of overseeing company's accounting and financial reporting processes and financial statement audits.[84]

	Charter must also provide for audit committee duties and responsibilities to include:
	• authority and responsibilities required by Exchange Act Rule 10A-3:
	  ◦ appointing, compensating and retaining any registered public accounting firm and for overseeing the work of such firms in preparing or issuing any audit report (and any related work) including resolving any disagreements between management and such firms regarding financial reporting;
	  ◦ establishing procedures for receipt, retention and treatment of complaints from company employees on accounting, internal accounting controls or auditing matters, as well as for confidential, anonymous submissions by company employees of concerns regarding questionable accounting or auditing matters;[75]
	  ◦ authority to engage independent counsel and other advisers as it determines necessary to carry out its duties; and
	  ◦ having appropriate funding, as determined by audit committee, for payment of compensation to independent auditor and advisers to committee, and for payment of ordinary administrative expenses that are necessary or appropriate to audit committee carrying out its duties;[76]
	• at least annually obtaining and reviewing report by independent auditor describing: (i) independent auditor's internal quality control procedures; (ii) any material issues raised by auditor's most recent internal quality control review or peer review of firm, or by any inquiry or investigation by governmental or professional authorities within preceding 5 years, respecting one or more independent audits carried out by firm, and steps taken to deal with any such issues; and (iii) all relationships between independent auditor and company to enable assessment of auditor's independence;[77]
	• meeting to review and discuss annual audited financial statements and quarterly financial statements with management and independent auditor, including review of "Management's Discussion and Analysis of Financial Condition and Results of Operations";[78]
	• discussing earnings press releases and financial information and earnings guidance given to analysts and rating agencies;[79]
		Charter must also address audit committee authority and responsibilities required by Exchange Act Rule 10A-3 (same requirement).[85]

Requirement	NYSE	NASDAQ
Audit Committee Responsibilities and Charter	• discussing policies with respect to risk assessment and risk management;[80] • meeting separately, from time to time, with management, with internal auditors and with independent auditors; • reviewing with independent auditor any audit problems or difficulties and management's response to such issues;[81] • setting clear hiring policies for employees or former employees of independent auditor; • reporting regularly to board of directors;[82] and • evaluating audit committee annually.[83]	
Review of Audit Committee Charter	Not addressed.	Company must certify that audit committee will annually review and reassess adequacy of its charter.[86]
Disclosure of Audit Committee Charter	Company's website (a requirement for all listed companies[87]) must include audit committee charter. Proxy statement or annual report on Form 10-K must state that charter is available on website and provide website address.[88]	Not addressed by Nasdaq. SEC Regulation S-K requires proxy statement disclosure of whether current audit committee charter is available on company's website and, if so, website address. If not so available, company should include charter as proxy statement appendix at least once every three years or in any year in which charter was materially amended. If charter is not on company's website and not in proxy statement for that fiscal year, disclose year charter was most recently included in proxy statement.[89]
Approval of Non-Audit Work	Not addressed by NYSE. SOX Section 202 requires audit committees of all issuers to approve all audit services and independent auditor is prohibited from providing any otherwise permissible non-audit services without audit committee prior approval (subject to certain exceptions).[90]	Not addressed by Nasdaq. Same requirement.
Exemptions	Audit committee members of the following entities must meet Exchange Act Rule 10A-3 independence criteria but not general NYSE independence requirements: • Business development companies; • ICA-registered open-end management investment companies; and • FPIs.	FPI audit committee members must meet Exchange Act Rule 10A-3 independence criteria but not general Nasdaq independence requirements.
	Certain FPIs are not required to comply with the independent audit committee requirements. *See "Applicability to Foreign Private Issuers."*	Same exemption.
	ICA-registered closed-end management investment companies are not required to make audit committee charter available on its website.[91]	Asset-backed issuers and other passive issuers are not required to have an independent audit committee.[92]

The Compensation Committee

Requirement	NYSE	NASDAQ
Compensation Committee	Company must have compensation committee[93] composed only of independent directors.[94]	CEO and other executive officer compensation must be determined or recommended to board for approval by compensation committee composed only of independent directors or, if no such committee exists, by independent directors constituting majority of board's independent directors in vote in which only independent directors participate until earlier of first annual meeting after January 14, 2014, or October 31, 2014. CEO may not be present for voting or deliberations by compensation committee or independent directors, as case may be, regarding his/her compensation.[95] Company *must* have, and certify that it has and will continue to have, compensation committee of at least two members, each of whom must be an independent director, by earlier of first annual meeting after January 15, 2014, or October 31, 2014.[96]
Compensation Committee Size	Not addressed.	At least two members by earlier of first annual meeting after January 15, 2014, or October 31, 2014.[97]
Additional Independence Requirements for Compensation Committee Members	By earlier of first annual meeting after January 15, 2014, or October 31, 2014, in affirmatively determining independence of any director who will serve on compensation committee, board of directors must *consider* all factors specifically relevant to determining whether a director has a relationship to company which is material to that director's ability to be independent from management in connection with compensation committee member duties, including, but not limited to: • source of compensation of such director, including any consulting, advisory or other compensatory fee paid by company to such director. Board should consider whether director receives compensation from any person or entity that would impair his/her ability to make independent judgments about company's executive compensation;[98] and • whether such director is affiliated with company, a subsidiary of company or an affiliate of a subsidiary of company. Board should consider whether affiliate relationship places director under direct or indirect control of company or its senior management, or creates a direct relationship between director and members of senior management, in each case of a nature that would impair his/her ability to make independent judgments about company's executive compensation.[99]	By earlier of first annual meeting after January 15, 2014, or October 31, 2014, a compensation committee member must *not* accept directly or indirectly any consulting, advisory or other compensatory fee from company or any subsidiary thereof. Compensatory fees do not include: (i) fees received as director or committee member; or (ii) receipt of fixed amounts of compensation under retirement plan (including deferred compensation) for prior service with company (where not contingent on continued service). In determining whether director is eligible to serve on compensation committee, board also must *consider* whether director is affiliated with company, a subsidiary of company or an affiliate of a subsidiary of company to determine whether such affiliation would impair director's judgment as a compensation committee member.[100] May be appropriate for certain affiliates, such as representatives of significant stockholders, to serve on compensation committees since their interests are likely aligned with those of other stockholders in seeking an appropriate executive compensation program.[101] One non-independent director who is not a current executive officer, employee or family member of an executive officer may serve on compensation committee (of at least three members) for a period of no longer than two years if board of directors, under "exceptional and limited circumstances," determines that membership on committee by that person is in the "best interests of the company and its shareholders." Disclose reliance on this exception, nature of relationship and reasons for determination on company's website or in annual meeting proxy statement or annual report on Form 10-K.[102]
	Note that Exchange Act Rule 16b-3 and Section 162(m) of the Internal Revenue Code of 1986, as amended, establish qualification requirements (which are in some respects more stringent than the Listing Standard independence requirements) for committees administering certain compensation programs in order for those programs to have the benefits provided by those sections; therefore, members of a compensation committee usually need to satisfy those qualifications as well.	*Same requirements.*

<table>
<tr><th>Requirement</th><th>NYSE</th><th>NASDAQ</th></tr>
<tr><td>Cure</td><td>Beginning earlier of first annual meeting after January 15, 2014, or October 31, 2014, if company fails to comply with compensation committee composition requirements because compensation committee member ceases to be independent for reasons outside member’s reasonable control, that person, with prompt notice to NYSE and only so long as majority of compensation committee members continue to be independent, may remain a compensation committee member until earlier of next annual meeting or one year from occurrence of the event that caused member to be no longer independent.[103] No cure period in case of a vacancy.</td><td>Beginning earlier of first annual meeting after January 15, 2014, or October 31, 2014, if company fails to comply with compensation committee composition requirement due to one vacancy, or one compensation committee member ceases to be independent due to circumstances beyond member’s reasonable control, company shall regain compliance with requirement by earlier of its next annual meeting or one year from occurrence of event that caused failure to comply; provided, however, that if annual meeting occurs no later than 180 days following the event that caused failure to comply, company shall instead have 180 days from such event to regain compliance. Company must provide notice to Nasdaq immediately upon learning of event or circumstance that caused non-compliance.[104]</td></tr>
<tr><td>Compensation Committee Responsibilities and Charter</td><td>Written charter must address:
• committee’s purpose and responsibilities, which must include: (i) reviewing and approving corporate goals and objectives relevant to CEO compensation, evaluating CEO’s performance in light of those goals and objectives, and, either as a committee or together with other independent directors (as directed by board), determining and approving CEO’s compensation level based on such evaluation;[105] (ii) making recommendations to board with respect to non-CEO executive officer compensation, and incentive-compensation and equity-based plans[106] that are subject to board approval;[107] and (iii) preparing disclosure required by SEC Regulation S-K Item 407(e)(5) (relating to compensation committee report recommending “Compensation Discussion and Analysis” to be included in company’s annual proxy statement or in annual report on Form 10-K);
• annual performance evaluation of compensation committee; and
• committee’s rights and responsibilities required by Exchange Act Rule 10C-1:
◦ sole discretion of compensation committee to retain or obtain advice of compensation consultant, independent legal counsel or other adviser;
◦ direct responsibility for appointment, compensation and oversight of work of any compensation consultant, independent legal counsel or other adviser retained by compensation committee;
◦ provision of appropriate funding, as determined by compensation committee, by company for payment of reasonable compensation to compensation consultant, independent legal counsel or any other adviser retained by compensation committee; and
◦ selection by compensation committee of compensation consultant, legal counsel or other adviser to compensation committee only after taking into consideration all factors relevant to that person’s independence from management, including six factors included in “Independence of Compensation Committee Advisers” below.[108]</td><td>Beginning earlier of first annual meeting after January 15, 2014, or October 31, 2014, company must certify that it has adopted written compensation committee charter, which must specify:
• scope of compensation committee’s responsibilities, and how it carries out those responsibilities, including structure, processes and membership requirements;
• compensation committee’s responsibility for determining, or recommending to board for determination, CEO and non-CEO executive compensation;
• that CEO may not be present during voting or deliberations on his/her compensation; and
• compensation committee responsibilities and authority required by Exchange Act Rule 10C-1 (same requirement).[111]
Beginning July 1, 2013, compensation committee or independent directors acting in lieu thereof must possess expanded authority over advisers.[112]</td></tr>
</table>

The Compensation Committee (continued)

Requirement	NYSE	NASDAQ
Compensation Committee Responsibilities and Charter	Board may allocate these responsibilities to committees of its own denomination, provided that committees are composed entirely of independent directors and have a charter.[109] Charter should also address: (i) committee member qualifications; (ii) committee member appointment and removal; (iii) committee structure and operations (including authority to delegate to subcommittees); and (iv) committee reporting to the board.[110]	
Review of Compensation Committee Charter	Not addressed.	Company must certify that compensation committee will annually review and reassess adequacy of its charter.[113]
Disclosure of Compensation Committee Charter	Company's website must include compensation committee charter. Proxy statement or annual report on Form 10-K must state that charter is available on website and provide website address.[119]	Not addressed by Nasdaq. SEC Regulation S-K requires proxy statement disclosure of whether current compensation committee charter is available on company's website and, if so, website address. If not so available, company should include charter as proxy statement appendix at least once every three years or in any year in which charter was materially amended. If charter is not on company's website and not in proxy statement for that fiscal year, disclose year charter was most recently included in proxy statement.[120]
Independence of Compensation Committee Advisers	Compensation committee may select compensation consultant, legal counsel or other adviser to compensation committee only after taking into consideration all factors relevant to that person's independence from management, including: • provision of other services to company by person that employs compensation consultant, legal counsel or other adviser; • amount of fees received from company by person that employs compensation consultant, legal counsel or other adviser, as percentage of total revenue of person that employs compensation consultant, legal counsel or other adviser; • policies and procedures of person that employs compensation consultant, legal counsel or other adviser that are designed to prevent conflicts of interest; • any business or personal relationship of compensation consultant, legal counsel or other adviser with compensation committee member; • any stock of company owned by compensation consultant, legal counsel or other adviser; and • any business or personal relationship of compensation consultant, legal counsel, other adviser or person employing adviser with executive officer of company.[114] Requirement should not be construed to: (i) require compensation committee to implement or act consistently with advice or recommendations of compensation consultant, independent legal counsel or other adviser to compensation committee; or (ii) affect ability or obligation of compensation committee to exercise its own judgment in fulfillment of compensation committee duties.	Same requirement.[116]

The Compensation Committee (continued)

Requirement	NYSE	NASDAQ
Independence of Compensation Committee Advisers	Compensation committee required to conduct independence assessment with respect to any compensation consultant, legal counsel or other adviser that provides advice to compensation committee, other than in-house legal counsel, and any compensation consultant, legal counsel or other adviser whose role is limited to following activities for which no disclosure would be required under SEC Regulation S-K Item 407(e)(3)(iii): (a) consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of company, and that is available generally to all salaried employees; or (b) providing information that either is not customized for a particular company or that is customized based on parameters that are not developed by compensation consultant, and about which compensation consultant does not provide advice. Compensation committee must consider enumerated independence factors before selecting or receiving advice from compensation adviser, but compensation consultants, legal counsel or other compensation advisers are not required to be independent. Compensation committee may select or receive advice from any compensation adviser it prefers including ones that are not independent, after considering six independence factors outlined above.[115]	
Disclosure of Compensation Consultant Conflicts of Interest	Not addressed by NYSE. SEC Regulation S-K requires all companies subject to proxy rules to disclose in proxy statements for annual meetings (or special meetings in lieu) the nature of any conflicts of interest raised by work of any compensation consultant who had any role in determining or recommending amount or form of either executive or director compensation during last fiscal year (where disclosure required pursuant to SEC Regulation S-K Item 407(e)(3)(iii)),[117] and how conflict is being addressed.[118]	Not addressed by Nasdaq. Same requirement.
Exemptions	The following are not required to have an independent compensation committee: • controlled companies; • limited partnerships; • companies in bankruptcy proceedings; • ICA-registered management investment companies; • passive investment organizations in the form of trusts; • listed derivatives and special purpose securities; and • FPIs (*see "Applicability to Foreign Private Issuers"*).[121] Smaller reporting companies are exempt from the *"Additional Independence Requirements for Compensation Committee Members"* and committee responsibility to assess *"Independence of Compensation Committee Advisers,"* but must comply with other requirements.[122]	The following are not required to have independent director oversight of executive compensation/an independent compensation committee: • controlled companies; • limited partnerships; • ICA-registered management investment companies; • asset-backed issuers and other passive issuers; • cooperatives; and • FPIs (*see "Applicability to Foreign Private Issuers"*).[123] Same exemption. Smaller reporting companies may adopt board resolution that specifies compensation committee's responsibilities in lieu of adopting written compensation committee charter.[124]

The Nominating/Corporate Governance Committee

Requirement	NYSE	NASDAQ
Nominating/ Corporate Governance Committee	Company must have nominating/corporate governance committee composed only of independent directors.[125]	Director nominees must be selected or recommended for board's selection by nominating committee composed only of independent directors or, if no such committee exists, by independent directors constituting majority of board's independent directors in vote in which only independent directors participate.[126] One non-independent director who is not a current executive officer, employee or family member of an executive officer may serve on nominating committee (of at least three members) for a period of no longer than two years if board of directors, under "exceptional and limited circumstances," determines that membership on committee by that person is in "best interests of the company and its shareholders." Disclose reliance on this exception, nature of relationship and reasons for determination on company's website or in annual meeting proxy statement or annual report on Form 10-K.[127]
Nominating/ Corporate Governance Committee Responsibilities and Charter	Written charter must address: • committee's purpose and responsibilities, which must include: (i) identifying individuals qualified to become board members consistent with board-approved criteria; (ii) selecting, or recommending that board select, director nominees for next annual meeting of shareholders; (iii) developing and recommending to board a set of corporate governance guidelines; and (iv) overseeing evaluation of board and management;[128] and • annual performance evaluation of committee.[129] Board may allocate these responsibilities to committees of its own denomination, provided that committees are composed entirely of independent directors and have a charter.[130] Charter should also address: (i) committee member qualifications; (ii) committee member appointment and removal; (iii) committee structure and operations (including authority to delegate to subcommittees); and (iv) committee reporting to board. Charter should give committee sole authority to retain and terminate any search firm to be used to identify director candidates, including sole authority to approve search firm's fees and other retention terms.[131]	Must address, by written committee charter provision or board resolution: (i) process for board selection of nominees for election by shareholders; and (ii) such other matters relating to director nominations as may be required under federal securities laws (such as policy regarding consideration that will be given to director candidates proposed by securityholders, which must be disclosed in proxy statement[132]).[133]
Disclosure of Nominating/ Corporate Governance Committee Charter	Company's website must include nominating/corporate governance committee charter. Proxy statement or annual report on Form 10-K must state that charter is available on website and provide website address.[134]	Not addressed by Nasdaq. SEC Regulation S-K requires proxy statement disclosure of whether current nominating committee charter is available on company's website and, if so, website address. If not so available, company should include charter as proxy statement appendix at least once every three years or in any year in which charter was materially amended. If charter is not on company's website and not in proxy statement for that fiscal year, disclose year charter was most recently included in proxy statement.[135]
Exemption from Independent Nominating Committee Process	Director nominations need not be subject to independent nominating committee process if company required by contract or otherwise to provide a party the ability to nominate one or more directors.[136]	Same exemption.[137] Company also need not comply if it is subject to a binding obligation establishing a different nomination process that was in effect prior to November 4, 2003 that is inconsistent with the requirement.[138]

The Nominating/Corporate Governance Committee (continued)

Requirement	NYSE	NASDAQ
Exemptions	The following are not required to comply with the independent nominating committee requirements: • controlled companies; • limited partnerships; • companies in bankruptcy proceedings; • ICA-registered management investment companies; • passive investment organizations in the form of trusts; • listed derivatives and special purpose securities; and • FPIs (*see "Applicability to Foreign Private Issuers"*).[139]	The following are not required to have independent director oversight of director nominations: • controlled companies; • limited partnerships; • ICA-registered management investment companies; • asset-backed issuers and other passive issuers; • cooperatives; and • FPIs (*see "Applicability to Foreign Private Issuers"*).[140]

Certain Specialized Committee Requirements

Board Committee Approval of Certain Swap Transactions	Mandatory Risk Committees for Certain Financial Companies
"Appropriate committee" of public company filing SEC reports that engages in derivatives activities must review and approve decision to enter into covered "swap transactions" relying on so-called "end-user exceptions" from (1) new Exchange Act requirements to clear security-based swap or execute security-based swap through national securities exchange and (2) new Commodity Exchange Act requirements to clear and execute swap through board of trade or swap execution facility (Dodd-Frank Sections 723(b) and 763(a)). Compliance with swap clearing requirements phased in at different times for different categories of market participants by Commodity Futures Trading Commission ("CFTC"). Compliance deadline for non-financial entities was September 9, 2013.141 SEC has proposed (but not yet adopted) corresponding rule for security-based swaps.[142] Per CFTC guidance, committee is "appropriate" only if it is "specifically authorized to review and approve the ... decision to enter into swaps." Board must "set appropriate policies" governing use of swaps subject to end-user exception and review these policies at least annually, and, as appropriate, more often upon triggering event (such as implementing new hedging strategy that was not contemplated in original approval).[143]	Certain entities must establish risk committee responsible for oversight of enterprise-wide risk management practices: (a) publicly traded "nonbank financial companies supervised by the Federal Reserve Board of Governors"; (b) publicly traded bank holding companies with total consolidated assets of $10 billion or more; and (c) publicly traded bank holding companies with total consolidated assets of less than $10 billion where Federal Reserve Board of Governors has determined that establishment of risk committee is necessary or appropriate to promote sound risk management (Dodd-Frank Section 165). "Nonbank financial company supervised by the Federal Reserve Board of Governors" is defined to mean a company that is substantially engaged in financial activities in U.S. where it has been determined by Financial Stability Oversight Council that material financial distress at the company would pose a threat to U.S. financial stability (other than bank holding companies or their subsidiaries).[144] On January 5, 2012, Federal Reserve Board of Governors proposed rules that would implement risk committee requirements; however, final rules not adopted at time of writing. Each risk committee must include such number of "independent directors" as Federal Reserve Board of Governors deems appropriate. Federal Reserve Board of Governors proposes to refer to definition of "independent director" in SEC Regulation S-K for companies that are publicly traded in United States. Federal Reserve Board's proposed rules would require risk committees to be chaired by independent director and include at least one "risk management expert," defined to mean person having experience in identifying, assessing and managing risk exposures of large, complex firms.

Codes of Conduct and Ethics, and Corporate Governance Guidelines

Requirement	NYSE	NASDAQ
Disclosure of Code of Ethics for Chief Executive Officer and Senior Financial Officers	SOX Section 406 requires companies to disclose whether or not they have adopted code of ethics applicable to principal executive officer, principal financial officer and controller or principal accounting officer (and, if not, why not) that includes standards reasonably necessary to promote: • honest and ethical conduct, including handling of actual or apparent conflicts of interest between personal and company interests; • full, fair, accurate, timely and understandable disclosure in SEC periodic reports; and • compliance with applicable governmental rules ("SOX 406 Code").[145] SEC Regulation S-K requires SOX 406 Code to be publicly available by (a) filing as exhibit to annual report, (b) posting on company's website (provided company has disclosed in its most recently filed annual report its website address and intention to provide disclosure in this manner) or (c) undertaking in annual report to provide copy to any person upon request.[146]	Same requirement.
Code of Business Conduct and Ethics	Companies must adopt code of business conduct and ethics (beyond SOX 406 Code discussed above) for directors, officers and employees that addresses: • conflicts of interest; • corporate opportunities; • confidentiality; • fair dealing with customers, suppliers, competitors and employees; • protection and proper use of company assets; • compliance with laws, rules and regulations (including insider trading laws); and • encouraging reporting of any illegal or unethical behavior. Code must contain compliance standards and procedures that will facilitate effective operation of code, and should ensure prompt and consistent actions against violations.[147]	Companies must adopt code of conduct for directors, officers and employees that addresses the matters set forth in SOX Section 406. Code must provide for enforcement mechanism that ensures prompt and consistent enforcement of code, protection for persons reporting questionable behavior, clear and objective standards for compliance, and fair process by which to determine violations.[148]
Code of Conduct and Ethics Waivers	Code must require that any waivers given to directors or executive officers must be approved by board or board committee.[149]	Same requirement but Nasdaq does not explicitly permit approval by board committee.[150]
Disclosure of Code of Conduct and Ethics	Company's website must include code. Proxy statement or annual report on Form 10-K must state that code is available on website and provide website address.[151]	Code must be publicly available.[152] *See "Disclosure of Code of Ethics for Chief Executive Officer and Senior Financial Officers."*
Disclosure of Code Amendments	Not addressed by NYSE. SEC Regulation S-K requires companies to promptly disclose on Form 8-K (or via company's website, provided company has disclosed in most recently filed annual report its website address and intention to provide disclosure in this manner) the changes in the code that apply to the CEO, CFO, principal accounting officer or controller or persons performing similar functions and that relate to any element required to be included in a SOX 406 Code.[153]	Not addressed by Nasdaq. Same requirement.

Codes of Conduct and Ethics, and Corporate Governance Guidelines (continued)

Requirement	NYSE	NASDAQ
Disclosure of Code of Conduct and Ethics Waivers	Disclose waivers given to directors of executive officers in press release, on company's website or on Form 8-K within four business days.[154]	Same requirement but Nasdaq also requires disclosure of reasons for waiver.[155]
Corporate Governance Guidelines and Disclosure	Companies required to adopt corporate governance guidelines that address: • director service qualification standards; • director responsibilities; • director access to management and, as necessary, independent advisers; • director compensation; • director continuing education and orientation; • management succession; and • annual board performance evaluation.[156] Guidelines must be on company's website. Proxy statement or annual report on Form 10-K must state that guidelines are available on website and provide website address.[157]	Not addressed.
Exemptions	The following are not required to comply with the requirements to have a code of conduct and ethics (that goes beyond the SOX 406 Code) and corporate governance guidelines: • ICA-registered open-end management investment companies; • passive investment organizations in the form of trusts; • listed derivatives and special purpose securities; and • FPIs (*see "Applicability to Foreign Private Issuers"*).[158]	The following are not required to comply with the requirement to have a code of conduct and ethics (that goes beyond the SOX 406 Code): • limited partnerships; • ICA-registered management investment companies; • asset-backed issuers and other passive issuers; and • FPIs (*see "Applicability to Foreign Private Issuers"*).[159]

Applicability to Foreign Private Issuers

Requirement	NYSE	NASDAQ
FPI Exemption – Generally	FPIs are permitted to follow home country practices in lieu of U.S. corporate governance requirements, except: • must have an audit committee that satisfies the requirements of Exchange Act Rule 10A-3 (with some exceptions discussed below);[160] • CEO must promptly notify NYSE in writing after any executive officer of company becomes aware of any non-compliance (material or non-material) with any applicable provision of NYSE corporate governance listing standards; and • FPI must provide annual and interim affirmations regarding company's governance. *See "Enforcement, Notifications and Affirmations."*[161]	Same exemptions but Nasdaq companies are not required to provide affirmations.[162]
FPI Exemption – Audit Committee Requirements	Not addressed by NYSE. SOX Section 301 exempts FPIs from certain independence and other audit committee requirements as follows: • non-executive officer employees allowed to sit on audit committee if employee elected or named to board of directors or audit committee pursuant to company's governing law or documents, employee collective bargaining or similar agreement, or other home country legal or listing requirements; • one audit committee member could be an affiliate of FPI if: (i) "no compensation" prong of Exchange Act Rule 10A-3 independence requirements is satisfied; (ii) member in question has only observer status and is not voting member or chair of audit committee; and (iii) neither member in question nor affiliate is an executive officer of FPI; • one audit committee member could be representative or designee of foreign government or foreign governmental entity that is an affiliate of FPI if: (i) "no compensation" prong of Exchange Act Rule 10A-3 independence requirements is satisfied; and (ii) member is not an executive officer of FPI; and • no separate audit committee required if: (i) company has board of auditors (or similar body) or statutory auditors (required in several jurisdictions); (ii) board/statutory auditors required under home country legal or listing provisions to be separate from board of directors or composed of one or more directors and one or more non-directors; (iii) board/statutory auditors operate under legal or listing provisions intended to provide oversight of outside auditors that is independent of management; (iv) membership on board/statutory auditors excludes executive officers of FPI; and (v) certain other requirements are met.[163]	Not addressed by Nasdaq. Same exemptions.

Requirement	NYSE	NASDAQ
Disclosure of FPI Exemption	Form 20-F filers must include in Form 20-F a statement of significant ways in which their corporate governance practices differ from those required of U.S. companies by NYSE listing standards. All other FPIs may disclose such differences either on their website or in annual report filed with SEC.[164]	FPIs must disclose in annual report filed with SEC (or on its website in English if it does not file annual report) any significant ways in which its corporate governance practices differ from those required of U.S. companies by Nasdaq listing standards, and describe alternate home country practice followed.[166] First time exemption is claimed, FPI must provide home country lawyer's certification that company's practices are not prohibited by home country's laws.[167]
	FPIs without an independent compensation committee must provide annual disclosure of reasons company does not have such committee. *See "Compensation Committee Requirements."*[165]	Same requirement.

Enforcement, Notifications and Affirmations

Requirement	NYSE	NASDAQ
Compliance Certification	CEO must certify annually to NYSE within 30 days after annual shareholders meeting (simultaneous with annual written affirmation) that he/she not aware of any listing standard violations or state how are standards not satisfied.[168]	Company must certify to Nasdaq its compliance with certain corporate governance listing standards.[169]
Notification of Non-Compliance	Prompt written notification by CEO required after any executive officer becomes aware of *any* non-compliance (material or non-material) with corporate governance listing standards.[170] Notifications in relation to material non-compliance trigger Form 8-K disclosure obligations under Item 3.01.	Same requirement but notification provided by company (not CEO).[171] Same requirement.
Annual Affirmations	Company must submit affirmation annually to NYSE (within 30 days after annual meeting) regarding details of compliance/non-compliance with corporate governance listing standards.[172]	Not addressed.
Interim Affirmations	Company must submit interim written affirmation (within 5 business days) each time a change occurs in board composition or independence or any committees required by listing standards and certain other matters.[173]	Not addressed.
Audit and Compensation Committee Requirements	NYSE prohibited from listing or continued listing of companies that do not comply with audit committee and compensation committee requirements of Exchange Act Rules 10A-3 and 10C-1 respectively, subject to applicable cure periods and exemptions.	Same requirement.
Public Reprimand Letter and Delisting	NYSE may issue public reprimand letter to company and may suspend or delist company for violating listing standards. Delisting required in case of Exchange Act Rule 10A-3 audit committee violations (reprimand letter insufficient).[174] Notifications of delisting or public reprimand issuance trigger Form 8K disclosure obligations under Item 3.01.	Nasdaq may issue public reprimand letter to company, limit listing or delist company for violating governance or notification listing standards.[175] Same requirement.
Exemptions	The following are not required to notify as to non-compliance or provide affirmations: • passive investment organizations in the form of trusts; and • listed derivatives and special purpose securities. The following are not required to provide CEO compliance certifications: • ICA-registered open-end management investment companies; and • FPIs (*see "Applicability to Foreign Private Issuers"*).[176]	No exemptions.

IPO and Other Transitional Provisions: NYSE[177]

Event	Majority of Independent Directors	Independent Audit Committee	Number of Audit Committee Members	Independent Compensation & Nominating Committees	Internal Audit Function	Website Posting of Committee Charters, Governance Guidelines & Code of Conduct
IPO	Within 1 year of "listing date" (regular way or when-issued)	At least 1 independent member by listing date Majority of independent members within 90 days of effective date of registration statement Fully independent committee within 1 year of effective date of registration statement No non-independent members permitted during phase-in if company required to file periodic reports with SEC before listing	1 member by listing date 2 members within 90 days of listing date 3 members within 1 year of listing date	At least 1 independent member on each committee by earlier of date IPO closes or 5 business days from listing date Majority of independent members on each committee within 90 days of listing date Fully independent committees within 1 year of listing date	Within 1 year of listing date	By earlier of date IPO closes or 5 business days from listing date
Carve-out or spin-off transaction	Same as for IPO	Same as for IPO	Same as for IPO	At least 1 independent member on each committee by date transaction closes Majority of independent members on each committee within 90 days of listing date Fully independent committees within 1 year of listing date	Same as for IPO	By date transaction closes
Newly listed upon emergence from bankruptcy	Same as for IPO	Fully independent committee by listing date unless Exchange Act Rule 10A-3 exemption available	3 members by listing date	At least 1 independent member on each committee by listing date Majority of independent members on each committee within 90 days of listing date Fully independent committees within 1 year of listing date	By listing date	By listing date

IPO and Other Transitional Provisions: NYSE (continued)

Event	Majority of Independent Directors	Independent Audit Committee	Number of Audit Committee Members	Independent Compensation & Nominating Committees	Internal Audit Function	Website Posting of Committee Charters, Governance Guidelines & Code of Conduct
Transfers from another market – previously registered pursuant to Exchange Act Section 12(b)	Within 1 year of listing date to extent exchange on which it was listed did not have same requirement If substantially similar requirement on other exchange, other exchange's transition period (if any)	Same as for emergence from bankruptcy	Within 1 year of listing date to extent exchange on which it was listed did not have same requirement If substantially similar requirement on other exchange, other exchange's transition period (if any)	Within 1 year of listing date to extent exchange on which it was listed did not have same requirement If substantially similar requirement on other exchange, other exchange's transition period (if any)	Same as for emergence from bankruptcy	Within 1 year of listing date to extent exchange on which it was listed did not have same requirement If substantially similar requirement on other exchange, other exchange's transition period (if any)
Transfers from another market – previously registered pursuant to Exchange Act Section 12(g)	Same as for IPO	Same as for emergence from bankruptcy	Same as for IPO	Same as for emergence from bankruptcy	Same as for emergence from bankruptcy	Same as for emergence from bankruptcy
Cease to qualify as a controlled company	Within 1 year of date of status change	Already required to comply	Already required to comply	At least 1 independent member on each committee by date of status change Majority of independent members on each committee within 90 days of date of status change Fully independent committees within 1 year of date of status change	By date of status change	By date of status change
Cease to qualify as a foreign private issuer	Within 6 months of date it fails to qualify as a foreign private issuer – tested at end of most recently completed second fiscal quarter ("determination date")	Members must comply with NYSE independence requirements (in addition to Rule 10A-3 independence requirements) within 6 months of determination date	3 members within 6 months of determination date	Within 6 months of determination date	By determination date	Within 6 months of determination date

IPO and Other Transitional Provisions: NYSE (continued)

Event	Majority of Independent Directors	Independent Audit Committee	Number of Audit Committee Members	Independent Compensation & Nominating Committees	Internal Audit Function	Website Posting of Committee Charters, Governance Guidelines & Code of Conduct
Cease to qualify as a smaller reporting company	Already required to comply	Already required to comply	Already required to comply	At least 1 member of compensation committee must meet enhanced independence requirements within 6 months of beginning of fiscal year following date it ceases to be a smaller reporting company (tested at end of most recently completed second fiscal quarter) (“date of status change”) Majority of compensation committee members must meet enhanced independence requirements within 9 months of date of status change Compensation committee must be comprised solely of members meeting enhanced independence requirements within 12 months of date of status change Must consider specified factors before selecting compensation consultants and other advisers within 6 months of date of status change Already required to comply with all other independent compensation and nominating committee requirements	Already required to comply	Already required to comply

IPO and Other Transitional Provisions: NASDAQ[178]

Event	Majority of Independent Directors	Independent Audit Committee	Independent Audit, Compensation & Nominating Committees (Assuming Compensation and Nominating Responsibilities Delegated to Committees and not Independent Directors)
IPO	Within 1 year of listing	At least 1 independent member by effective date of registration statement Majority of independent members within 90 days of effective date of registration statement Fully independent committee within 1 year of effective date of registration statement No non-independent members permitted during phase-in if company required to file periodic reports with SEC before listing	At least 1 independent member on each committee by time of listing Majority of independent members on each committee within 90 days of listing Fully independent committees within 1 year of listing
Newly issued upon emergence from bankruptcy	Same as for IPO	Fully independent committee by listing date unless Exchange Act Rule 10A-3 exemption available	Same as for IPO
Transfers from another market	Within 1 year of listing date to extent exchange on which it was listed did not have same requirement If substantially similar requirement on other exchange, other exchange's transition period (if any)	Same as for emergence from bankruptcy	Within 1 year of listing date to extent exchange on which it was listed did not have same requirement If substantially similar requirement on other exchange, other exchange's transition period (if any)
Cease to qualify as a controlled company	Within 1 year of date of status change	Already required to comply	At least 1 independent member on each committee by date of status change Majority of independent members on each committee within 90 days of date of status change Fully independent committees within 1 year of date of status change

IPO and Other Transitional Provisions: NASDAQ (continued)

Event	Majority of Independent Directors	Independent Audit Committee	Independent Audit, Compensation & Nominating Committees (Assuming Compensation and Nominating Responsibilities Delegated to Committees and not Independent Directors)
Cease to qualify as a smaller reporting company	Already required to comply	Already required to comply	At least 1 member of compensation committee must meet enhanced independence requirements within 6 months of beginning of fiscal year following date it ceases to be a smaller reporting company (tested at end of most recently completed second fiscal quarter) ("date of status change") Majority of compensation committee members must meet enhanced independence requirements within 9 months of date of status change Compensation committee must be comprised solely of members meeting enhanced independence requirements within 12 months of date of status change Must have authority in relation to selection of compensation consultants and other advisers within 6 months of date of status change Already required to comply with all other independent compensation and nominating committee requirements

Endnotes

1. Defined in Exchange Act Rule 3b-4(c). NYSE Listed Company Manual Sections 303A.00, 303A.11; Nasdaq Equity Rule 5615(a)(3).
2. NYSE Listed Company Manual Section 303A.00; Nasdaq Equity Rule 5615(c). A company is "controlled" where more than 50% of the voting power for the election of directors is held by an individual, a group or another company.
3. *See* NYSE Listed Company Manual Section 303A.00; Nasdaq Equity Rule 5605(d)(5); Nasdaq IM-5605-6. "Smaller reporting company" means an issuer (other than an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent that is not a smaller reporting company) that had (a) a public float of less than $75 million as of the last business day of its most recently completed second fiscal quarter or as of a date within 30 days of the date of filing of an initial registration statement, or (b) in the case of an issuer with zero public float, revenues of less than $50 million during the most recently completed fiscal year for which audited financial statements are available. Exchange Act Rule 12b-2.
4. Nasdaq in its discretion may deny continued listing to a company in bankruptcy proceedings, even though it continues to meet all applicable listing requirements. Nasdaq Equity Rule 5110(b).
5. Nasdaq-listed limited partnerships are governed by a separate Nasdaq governance listing standard that reflects certain of the listing standards applicable to corporations. Nasdaq Equity Rule 5615(a)(4).
6. *See* NYSE Listed Company Manual Section 303A.00 and Nasdaq Equity Rule 5615(a)(5). A discussion of the variations applicable to registered investment companies are beyond the scope of this summary.
7. NYSE Listed Company Manual Section 303A.01.
8. Nasdaq Equity Rule 5605(b)(1).
9. Companies are required to regain compliance by the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply, the company shall instead have 180 days from such event to regain compliance. Nasdaq Equity Rule 5605(b)(1)(A).
10. NYSE Listed Company Manual Section 303A.03.
11. Commentary to NYSE Listed Company Manual Section 303A.03.
12. Nasdaq Equity Rule 5605(b)(2).
13. Executive sessions may occur more frequently than twice a year in conjunction with regularly scheduled board meetings. Nasdaq IM-5605-2.
14. Commentary to NYSE Listed Company Manual Section 303A.03. Note that many companies that have a combined Chairman/CEO appoint an independent lead director who presides at meetings of non-management directors and has other functions (for example, approval of the board calendar, agenda and materials). Institutional Shareholder Services ("ISS") proxy voting policy includes guidelines with respect to what ISS considers to be appropriate functions for a lead director. ISS, 2013 U.S. Proxy Voting Summary Guidelines (December 19, 2012) at 20.
15. Disclosure Requirement of NYSE Listed Company Manual Section 303A.03. If these disclosures are provided on a company website, the company must disclose in its proxy statement or annual report that it is including such disclosures on its website and provide the website address.
16. NYSE Listed Company Manual Section 303A.00.
17. Nasdaq Equity Rule 5615.
18. NYSE Listed Company Manual Sections 303A.06, 303A.07.
19. NYSE Listed Company Manual Section 303A.05.
20. NYSE Listed Company Manual Section 303A.04.
21. Nasdaq Equity Rule 5605(c).
22. Nasdaq Equity Rules 5605(d)(6), 5605A(d).
23. Nasdaq Equity Rule 5605(d).
24. Nasdaq Equity Rule 5605(e).
25. The NYSE listing standards state that a material relationship "can include commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships, among others." Commentary to NYSE Listed Company Manual Section 303A.02(a). *See also* SEC Regulation S-K Item 404.
26. NYSE Listed Company Manual Section 303A.02(a). References to a "listed company" for these purposes include a subsidiary that is in a consolidated group for financial reporting purposes with the listed company and a parent company with which the listed company is in a consolidated group for financial reporting purposes. General Commentary to NYSE Listed Company Manual Section 303A.02. *See "Parent/Subsidiary Relationships and Shareholdings."*
27. The term "company" includes any parent or subsidiary of the company. The term "parent or subsidiary" is intended to cover entities the issuer controls and consolidates with the company's financial statements as filed with the SEC (but not if the company reflects such entity solely as an investment in its financial statements). Nasdaq IM-5605. *See "Parent/Subsidiary Relationships and Shareholdings."*
28. Nasdaq Equity Rule 5605(a)(2).

Endnotes (continued)

29. For purposes of Section 303A, an "immediate family member" includes a person's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and anyone (other than domestic employees) who shares such person's home. When applying the look-back provisions in Section 303A.02(b), listed companies need not consider individuals who are no longer immediate family members as a result of legal separation or divorce, or those who have died or become incapacitated. Commentary to NYSE Listed Company Manual Section 303A.02(b).

30. For purposes of Section 303A, the term "executive officer" has the same meaning specified for the term "officer" in Exchange Act Rule 16a-1(f). NYSE Listed Company Manual Section 303A.02, fn 1. Rule 16a-1(f) provides that the term "officer" shall include the company's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice president of the company in charge of a principal business unit, division or function, any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer.

31. However, service within the past three years as an interim Chairman, CEO or other executive officer does not automatically disqualify a director from being considered independent following such interim employment. Commentary to NYSE Listed Company Manual Section 303A.02(b)(i).

32. Compensation received (i) for prior service as an interim Chairman, CEO or other executive officer or (ii) by an immediate family member for service as an employee (other than an executive officer) of the listed company is not considered disqualifying for this purpose. Commentary to NYSE Listed Company Manual Section 303A.02(b)(ii).

33. By comparison to the similar Nasdaq standard, this standard may apply to bar not only a simultaneous interlock, that is, one where the two individuals' crossing relationships occur at the same point in time during the three-year look-back period, but more broadly to prohibit an overlap by reason of compensation committee membership on the part of a present executive officer of the listed company at any point during the three-year period in which a director served as an executive officer of the company on which the listed company's executive officer served on the compensation committee.

34. This test would not automatically disqualify as "independent" a director who has a consulting (as opposed to employment) relationship with an organization that provides or receives services; however, the board would still need to consider the consulting relationship when determining if the director has a "material relationship" that would impair independence.

35. The payments and consolidated gross revenue numbers to be used for this independence test must be those from the last completed fiscal year, if available. Note that only directors who *currently* have such a relationship are disqualified from independent status; if the director had such a relationship within the past three years but does not currently, he or she is not so disqualified. Companies may have business relationships (as a vendor, for example) with a charitable organization and payments related to such business relationships – as opposed to charitable donations – are intended to be covered by this test.

36. NYSE Listed Company Manual Section 303A.02(b). If this disclosure is provided on a company website, the company must disclose in its proxy statement or annual report that it is including such disclosure on its website and provide the website address. Disclosure Requirement of NYSE Listed Company Manual Section 303A.02(b).

37. For purposes of Rule 5605, a family member includes a person's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, whether by blood, marriage or adoption, or someone who has the same residence as the person. Nasdaq Equity Rule 5605(a)(2) and IM-5605.

38. References to "executive officer" mean those officers covered by Exchange Act Rule 16a-1(f). Nasdaq IM5605. *See* note 30.

39. Payments to a director to provide his or her services as an interim executive officer for a year or less will not be considered employment constituting a per se bar to a finding of independence, but the board must nevertheless affirmatively determine that such service and the compensation received for such service would not interfere with his or her ability to exercise independent judgment as a director. A director would not be considered independent while serving as an interim officer. Nasdaq IM-5605.

40. Two examples of disqualifying compensation provided by Nasdaq IM-5605 are payments to a director (or the director's family member) pursuant to a consulting or personal service contract or political contributions to a director's (or his family member's) campaign. The following types of payments are described in IM-5605 as being "non-compensatory in nature"; (i) payments arising solely from investments in the company's securities; (ii) certain loans from financial institutions made in the ordinary course of business; (iii) certain payments from financial institutions in connection with the deposit of funds made in the ordinary course of business; and (iv) loans permitted under Section 13(k) of the Exchange Act.

41. Service as an interim executive officer for a year or less, even if the director receives compensation of more than $120,000 for such service, does not constitute a per se bar to a finding of independence, but the board must nevertheless affirmatively determine that such service and the compensation received for such service would not interfere with the individual's ability to exercise independent judgment as a director. However, if while serving as interim executive officer the director participates in the preparation of the company's financial statements, then such director is barred from audit committee service for three years. Nasdaq IM-5605.

42. By comparison to the similar NYSE standard, this standard may also apply where a director or family member served during the past three years as an executive officer of another company of which a current executive officer of the listed company served on the compensation committee during the past three years.

43. Payments arising solely from investments in the company's securities or under non-discretionary charitable contribution matching programs are not included in the limitation. Nasdaq Equity Rule 5605(a)(2). Note that only directors who *currently* have such a relationship are disqualified from independent status; if the director had such a relationship within the past three years but does not currently, he or she is not so disqualified.

44. Nasdaq Equity Rule 5605(a)(2). Nasdaq also "encourages companies to consider other situations where a director or their family member and the company each have a relationship with the same charity when assessing director independence." Nasdaq IM5605.

Endnotes (continued)

45. Note that according to the NYSE, the three-year look-back period still applies in the context of a spin-off. For example, a director of the spin-off company could not be considered independent until at least three years post-spin if he or she was an executive officer or employee of the former parent company at the time of the spin-off.
46. The term "consolidated group" refers to a company, its parent(s), and/or its subsidiary or subsidiaries that would be required under GAAP to prepare financial statements on a consolidated basis. NYSE FAQs, Section 3.C.
47. Commentary to NYSE Listed Company Manual Section 303A.02(a).
48. Nasdaq IM-5605.
49. Nasdaq IM-5605.
50. Disclosure Requirement of NYSE Listed Company Manual Section 303A.02(a). The NYSE rule amendments that became effective on January 1, 2010 eliminated disclosure provisions relating to customized materiality standards that a board may adopt concerning what relationships it considers "material" in determining director independence. This disclosure requirement was eliminated as duplicative of comparable requirements in SEC Regulation S-K Item 407(a). SEC Release No. 34-61067, File No. SR-NYSE-2009-89 (November 25, 2009).
51. Nasdaq Equity Rule 5605(b)(1).
52. NYSE Listed Company Manual Section 303A.06.
53. Nasdaq Equity Rule 5605(c)(2).
54. NYSE Listed Company Manual Section 303A.07(a).
55. Nasdaq Equity Rule 5605(c)(2)(A).
56. Compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including any deferred compensation plan) for prior service with company, provided that such compensation is not contingent on continued service). Indirect compensation includes payments to spouses, minor children or stepchildren and children or stepchildren sharing a home with the audit committee member, as well as payments accepted by an entity which provides accounting, consulting, legal, investment banking or financial advisory services to the company and of which the audit committee member is a partner, member, an officer such as a managing director or an executive officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions). Other senior level positions, such as where the director is "of counsel" at a law firm that provides services to the company, may also be problematic. Exchange Act Rule 10A-3(e)(8).
57. "Affiliate" or "affiliated person" is defined as "a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified." "Control" is defined as "possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise." An executive officer of an affiliate, a director who is also an employee of an affiliate, a general partner of an affiliate and a managing member of an affiliate are all deemed to be "affiliates." Under a "safe harbor" provision, a person who is not (a) an executive officer or (b) a shareholder owning 10 percent or more of any class of voting securities of a company is deemed not to control the company. Exchange Act Rule 10A-3(e)(1), (4). A director who has been designated by an affiliate (such as a significant shareholder) to serve on a board would not, without more, be prohibited from audit committee service. However, such a designee would likely not be independent for audit committee purposes if he or she is required to vote as directed by the affiliate (for example, pursuant to a shareholders agreement). Also exempt from the "affiliated person" requirement is an audit committee member that sits on the board of directors of both a listed issuer and an affiliate of the listed issuer, if the audit committee member otherwise meets the independence requirements for both the issuer and the affiliate. For example, a director should be able to sit on the audit committees of both a listed parent and a listed subsidiary. It is recommended that a company disclose in its annual meeting proxy statement (or, if the company does not file an annual meeting proxy statement, in its annual report) if any audit committee member has been determined by the company's board to be independent but falls outside of the safe harbor provisions of Rule 10A3(e)(1)(ii). Also exempt from the "affiliated person" requirement is an audit committee member that sits on the board of directors of both a listed issuer and an affiliate of the listed issuer, if the audit committee member otherwise meets the independence requirements for both the issuer and the affiliate. Exchange Act Rule 10A-3(b)(1)(iv)(B). For example, a director should be able to sit on the audit committees of both a listed parent and a listed subsidiary. It is recommended that a company disclose in its annual meeting proxy statement (or, if the company does not file an annual meeting proxy statement, in its annual report) if any audit committee member has been determined by the company's board to be independent but falls outside of the safe harbor provisions of Rule 10A3(e)(1)(ii).
58. Exchange Act Rule 10A-3(b); NYSE Listed Company Manual Sections 303A.06, 303A.07(a). However, under Rule 10A-3(c)(2), at any time when a company has a class of common equity securities (or similar securities) that is listed on a national securities exchange, a direct or indirect consolidated subsidiary or an at least 50% beneficially owned subsidiary of such listed company need not meet these audit committee independence requirements – even though such subsidiary is itself a listed company – unless the subsidiary itself has a class of equity securities, other than non-convertible, non-participating preferred securities, so listed.
59. Nasdaq Equity Rule 5605(c)(2)(A). A director who serves as an interim executive officer for less than a year may be considered independent but such a director cannot serve on the company's audit committee if, as an interim executive officer, he or she participated in the preparation of the company's financial statements within the past three years. Nasdaq IM-5605.

60. Nasdaq Equity Rule 5605(c)(2)(B). *See also* SEC Regulation S-K Item 407(d)(2) relating to the nature of the relationship that makes the person not independent and the reasons for the board's determination.
61. Commentary to NYSE Listed Company Manual Section 303A.06.
62. Nasdaq Equity Rule 5605(c)(4). Companies are required to regain compliance by the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply, the company shall instead have 180 days from such event to regain compliance. This cure period may not be relied upon in addition to the cure period relating to failure to comply with independent audit committee requirements because of an audit committee member ceasing to be independent for reasons outside the audit committee member's reasonable control.
63. Exchange Act Rule 10A-3(d); SEC Regulation S-K, Item 407(d).
64. Commentary to NYSE Listed Company Manual Section 303A.07(a).
65. Nasdaq Equity Rule 5605(c)(2)(A).
66. Nasdaq IM-5605-4.
67. SOX Section 407; SEC Regulation S-K Item 407(d)(5).
68. Disclosure Requirement of NYSE Listed Company Manual Section 303A.07(a). If this disclosure is provided on a company website, the company must disclose in its proxy statement or annual report that it is including such disclosure on its website and provide the website address.
69. NYSE Listed Company Manual Section 303A.06.
70. Nasdaq Equity Rule 5605(c)(3).
71. NYSE listing standards suggest that the audit committee or a comparable body could be considered as the forum for review and evaluation of potential conflicts of interest situations. NYSE Listed Company Manual Section 314.
72. Nasdaq Equity Rule 5630. For purposes of this rule, a "related person transaction" is one defined as such in SEC Regulation S-K Item 404 or, in the case of a non-U.S. issuer, a transaction required to be disclosed pursuant to Item 7.B. of Form 20-F.
73. NYSE Listed Company Manual Section 303A.07(c). Listed companies must maintain an internal audit function to provide management and the audit committee with ongoing assessments of the listed company's risk management processes and system of internal control. A listed company may choose to outsource this function to a third party service provider other than its independent auditor. Commentary to NYSE Listed Company Manual Section 303A.07(c). Effective August 22, 2013, certain categories of newly listed companies must put an internal audit function in place within one year after listing. NYSE Listed Company Manual Section 303A.00.
74. NYSE Listed Company Manual Section 303A.07(b)(i).
75. SOX Section 806 prohibits companies from discharging, demoting or otherwise discriminating against any employee who provides information regarding conduct employee reasonably believes constitutes violation of securities or financial fraud laws (i) to any governmental authority, (ii) in any proceeding pending or about to be commenced concerning such violation or (iii) to any person with supervisory authority over the employee or authorized by company to investigate such conduct (e.g., audit committee; auditors; counsel engaged by committee). Dodd-Frank Section 929A amends SOX to clarify that its whistleblower protections apply not just to public company employees, but also to employees of public company's subsidiaries and other affiliates whose financial information is included in public company's consolidated financial statements. Regulation 21F under the Exchange Act implements the whistleblower bounty program and anti-retaliation provisions mandated by Dodd-Frank Section 922(a). See SEC Release No. 34-64545 (May 25, 2011). The SEC's whistleblower bounty program is administered by the Office of the Whistleblower residing within the Division of Enforcement. Under this program, an eligible individual (but not a corporation or other entity) may receive a cash award from a special SEC fund ranging from 10% to 30% of the total amount of monetary sanctions, in excess of $1 million, recovered by the SEC in a civil judicial or administrative action. An eligible whistleblower also may receive a cash award based on monetary sanctions collected by other regulatory or law-enforcement authorities in a "related action," including fines and penalties imposed in a federal criminal prosecution brought by the U.S. Department of Justice. To recover, a whistleblower must "voluntarily" provide, in accordance with specific rules, "original information" about a violation of the federal securities laws that has occurred, is ongoing or is about to occur and that ultimately "leads to successful enforcement action." While previously the SEC could only offer financial incentives to whistleblowers in the area of insider trading, the new whistleblower program provides bounties for information relating to any violation of the federal securities laws, including the Foreign Corrupt Practices Act.
76. NYSE Listed Company Manual Section 303A.07(b)(iii).
77. After reviewing this report and the independent auditor's work throughout the year, the audit committee will be in a position to evaluate the auditor's qualifications, performance and independence. This evaluation should include the review and evaluation of the lead partner of the independent auditor. In making its evaluation, the audit committee should take into account the opinions of management and the company's internal auditors (or other personnel responsible for the internal audit function). In addition to assuring the regular rotation of the lead audit partner as required by law, the audit committee should further consider whether, in order to assure continuing auditor independence, there should be regular rotation of the audit firm itself. The audit committee should present its conclusions with respect to the independent auditor to the full board. Commentary to NYSE Listed Company Manual Section 303A.07(b)(iii)(A).
78. Meetings may be telephonic if permitted under applicable corporate law; polling of audit committee members, however, is not permitted in lieu of meetings. Commentary to NYSE Listed Company Manual Section 303A.07(b)(iii)(B).
79. The audit committee's responsibility to discuss earnings releases, as well as financial information and earnings guidance, may be done generally (i.e., discussion of the types of information to be disclosed and the type of presentation to be made). The audit committee need not discuss in advance each earnings release or each instance in which a company may provide earnings guidance. Commentary to NYSE Listed Company Manual Section 303A.07(b)(iii)(C).

Endnotes (continued)

80. While it is the job of the CEO and senior management to assess and manage the company's exposure to risk, the audit committee must discuss guidelines and policies to govern the process by which this is handled. The audit committee should discuss the company's major financial risk exposures and the steps management has taken to monitor and control such exposures. The audit committee is not required to be the sole body responsible for risk assessment and management, but the committee must discuss guidelines and policies to govern the process by which risk assessment and management is undertaken. Many companies, particularly financial companies, manage and assess their risk through mechanisms other than the audit committee. The processes these companies have in place should be reviewed in a general manner by the audit committee, but they need not be replaced by the audit committee. Commentary to NYSE Listed Company Manual Section 303A.07(b)(iii)(D).
81. The audit committee must regularly review with the independent auditor any difficulties the auditor encountered in the course of the audit work, including any restrictions on the scope of the independent auditor's activities or on access to requested information, and any significant disagreements with management. Among the items the audit committee may want to review with the auditor are: any accounting adjustments that were noted or proposed by the auditor but were "passed" (as immaterial or otherwise); any communications between the audit team and the audit firm's national office respecting auditing or accounting issues presented by the engagement; and any "management" or "internal control" letter issued, or proposed to be issued, by the audit firm to the company. The review should also include discussion of the responsibilities, budget and staffing of the company's internal audit function. Commentary to NYSE Listed Company Manual Section 303A.07(b)(iii)(F).
82. The audit committee should review with the full board any issues that arise with respect to the quality or integrity of the company's financial statements, the company's compliance with legal or regulatory requirements, the performance and independence of the company's independent auditors, or the performance of the internal audit function. Commentary to NYSE Listed Company Manual Section 303A.07(b)(iii)(H).
83. NYSE Listed Company Manual Section 303A.07(b)(ii)-(iii). While the fundamental responsibility for the company's financial statements and disclosures rests with management and the independent auditor, the audit committee must review: (A) major issues regarding accounting principles and financial statement presentations, including any significant changes in the company's selection or application of accounting principles, and major issues as to the adequacy of the company's internal controls and any special audit steps adopted in light of material control deficiencies; (B) analyses prepared by management and/or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analyses of the effects of alternative GAAP methods on the financial statements; (C) the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of the company; and (D) the type and presentation of information to be included in earnings press releases (paying particular attention to any use of "pro forma," or "adjusted" non-GAAP, information), as well as review any financial information and earnings guidance provided to analysts and rating agencies. Commentary to NYSE Listed Company Manual Section 303A.07(b).
84. Nasdaq Equity Rule 5605(c)(1).
85. Nasdaq Equity Rule 5605(c)(3).
86. Nasdaq Equity Rule 5605(c)(1).
87. NYSE Listed Company Manual Section 307.00.
88. Website Posting Requirement and Disclosure Requirements of NYSE Listed Company Manual Section 303A.07(b). *See also* SEC Regulation S-K Item 407(d)(1).
89. SEC Regulation S-K Item 407(d)(1).
90. SOX Section 202; Exchange Act Section 10(h)-(i).
91. NYSE Listed Company Manual Section 303A.00.
92. Nasdaq Equity Rule 5615.
93. To ensure that companies do not avoid the new rules by simply not establishing a formal compensation committee, Exchange Act Rule 10C-1(c)(2) defines "compensation committee" to encompass (a) any other committee of the board of directors performing functions typically performed by a compensation committee and (b) the members of the board of directors who, in the absence of a formal committee, oversee executive compensation matters. The rule does not, however, apply to a committee that addresses only director compensation, so the typical nominating/corporate governance committee would not be subject to the heightened compensation committee independence standards. The SEC determined it was not necessary to require the exchanges to apply the listing standards related to the compensation committee's authority to retain compensation advisers or require funding for payment of such advisers to directors who oversee executive compensation matters outside of the formal committee structure since such directors already retain the powers of the board of directors in making executive compensation determinations. *See* SEC Release No. 33-9330, Listing Standards for Compensation Committees (June 20, 2012) at 12-13.
94. NYSE Listed Company Manual Section 303A.05(a).
95. Nasdaq Equity Rule 5605A(d).
96. Nasdaq Equity Rule 5605(d)(2)(A); Nasdaq IM-5605-6.
97. Nasdaq Equity Rule 5605(d)(2)(A); Nasdaq IM-5605-6.
98. The NYSE has not specifically defined "compensatory fees" for the purposes of NYSE Section 303A.02(a)(ii). NYSE companies will likely look to the definition of compensatory fees in Exchange Act Rule 10A-3(b)(1)(ii)(A) relating to the independence of audit committee members.
99. NYSE Listed Company Manual Sections 303A.00, 303A.02(a)(ii). Commentary to NYSE Listed Company Manual Section 303A.02(a).
100. Nasdaq Equity Rules 5605(d)(2)(A), 5605(d)(6).
101. Nasdaq IM-5605-6.
102. Nasdaq Equity Rule 5605(d)(2)(B). *See also* SEC Regulation S-K Item 407(a), Instruction 1.
103. NYSE Listed Company Manual Section 303A.00.

Endnotes (continued)

104. Nasdaq Equity Rule 5605(d)(4).

105. In determining the long-term incentive component of CEO compensation, the committee should consider the listed company's performance and relative shareholder return, the value of similar incentive awards to CEOs at comparable companies, and the awards given to the listed company's CEO in past years. The compensation committee is not precluded from approving awards (with or without ratification of the board) as may be required to comply with applicable tax laws (i.e., Section 162(m) of the Internal Revenue Code of 1986, as amended). Discussions regarding CEO compensation with the board generally are not precluded, as it is not the intent to impair communication among board members. Commentary to NYSE Listed Company Manual Section 303A.05.

106. All equity-compensation plans and any material revisions to the terms of such plans are subject to shareholder approval with limited exceptions. NYSE Listed Company Manual Section 303A.08. Nasdaq has a similar requirement. *See* Nasdaq Equity Rule 5635(c).

107. This provision is not intended to preclude a board's ability to delegate its authority to approve non-CEO executive officer compensation to the compensation committee. Commentary to NYSE Listed Company Manual Section 303A.05.

108. NYSE Listed Company Manual Section 303A.05(b)(iii).

109. Commentary to NYSE Listed Company Manual Section 303A.05(b).

110. Commentary to NYSE Listed Company Manual Section 303A.05(b).

111. Nasdaq Equity Rules 5605(d)(1), 5605(d)(6).

112. Nasdaq Equity Rules 5605(d)(6).

113. Nasdaq Equity Rule 5605(d)(1).

114. NYSE Listed Company Manual Section 303A.05(c).

115. Commentary to NYSE Listed Company Manual Section 303A.05(c).

116. Nasdaq Equity Rule 5605(d)(3). The provisions of Rule 5605(d)(3) became effective on July 1, 2013; to the extent a listed company does not have a compensation committee in the period before the earlier of the company's first annual meeting after January 15, 2014, or October 31, 2014, the provisions of Rule 5605(d)(3) shall apply to the independent directors who determine, or recommend to the board for determination, the compensation of the CEO and non-CEO executive officers. Companies should consider under state corporate law whether to grant the specific responsibilities and authority referenced in Rule 5605(d)(3) through a charter, resolution or other board action; however, Nasdaq requires only that a compensation committee, or independent directors acting in lieu of a compensation committee, have the responsibilities and authority referenced in Rule 5605(d)(3) on July 1, 2013. Companies must have a written compensation committee charter that includes, among others, the responsibilities and authority referenced in Rule 5605(d)(3) by the earlier of their first annual meeting after January 15, 2014, or October 31, 2014. Nasdaq Equity Rule 5605(d)(6).

117. For all public companies, Nasdaq-listed as well as NYSE-listed, SEC Regulation S-K Item 407(e)(3)(iii) requires annual disclosure of whether a compensation consultant who determines or recommends the amount or form of executive or director compensation is engaged directly by the compensation committee (other than consultants that only provide specific types of non-customized or broad-based consulting services). In addition, information is required about certain other services provided by the compensation consultant to the company and the aggregate remuneration it received for all services provided, including whether such services were approved by the compensation committee, where the compensation consultant received more than $120,000 in the last fiscal year for its other services.

118. SEC Regulation S-K Item 407(e)(3)(iv). Note that disclosure of *potential* conflicts of interest or the *appearance* of a conflict of interest is not required, nor is disclosure with respect to advisers other than compensation consultants. *See* SEC Release No. 33-9330, Listing Standards for Compensation Committees (June 20, 2012) at 79.

119. Website Posting Requirement and Disclosure Requirements of NYSE Listed Company Manual Section 303A.05. *See also* SEC Regulation S-K Item 407(e)(2).

120. SEC Regulation S-K Item 407(e)(2).

121. NYSE Listed Company Manual Section 303A.00.

122. NYSE Listed Company Manual Section 303A.00.

123. Nasdaq Equity Rule 5615.

124. Nasdaq Equity Rule 5605(d)(5); Nasdaq IM-5605-6.

125. NYSE Listed Company Manual Section 303A.04(a).

126. Nasdaq Equity Rule 5605(e).

127. Nasdaq Equity Rule 5605(e)(3). *See also* SEC Regulation S-K Item 407(a), Instruction 1.

128. Placing responsibility for new director and board committee nominations in the hands of an independent nominating/corporate governance committee can enhance the independence and quality of nominees. Commentary to NYSE Listed Company Manual Section 303A.04.

129. NYSE Listed Company Manual Section 303A.04(b).

130. Commentary to NYSE Listed Company Manual Section 303A.04.

131. Commentary to NYSE Listed Company Manual Section 303A.04.

132. See SEC Regulation 14A, Schedule 14A, Item 7(d)(2)(ii)(E).

133. Nasdaq Equity Rule 5605(e)(2).

134. Website Posting Requirement and Disclosure Requirements of NYSE Listed Company Manual Section 303A.04. *See also* SEC Regulation S-K Item 407(c)(2)(i).

135. SEC Regulation S-K Item 407(c)(2)(i).

136. Commentary to NYSE Listed Company Manual Section 303A.04.

137. Nasdaq Equity Rule 5605(e)(4).

138. Nasdaq IM-5605-7.
139. NYSE Listed Company Manual Section 303A.00.
140. Nasdaq Equity Rule 5615.
141. *See* CFTC, Swap Transaction Compliance and Implementation Schedule: Clearing Requirement Under Section 2(h) of the CEA, 77 Fed. Reg. 44441 (July 30, 2012); CFTC, Clearing Requirement Determination Under Section 2(h) of the CEA, 77 Fed. Reg. 74283 (December 13, 2012).
142. *See* SEC Release No. 34-63556, End-User Exception to Mandatory Clearing of Security-Based Swaps (December 15, 2010).
143. CFTC, End-User Exception to the Clearing Requirement for Swaps, 77 Fed. Reg. 42560 (July 19, 2012) at 42569.
144. Federal Reserve System Regulation YY, Docket No. 1438 (January 5, 2012). The comment period ended April 30, 2012. Note that Dodd-Frank Section 165 required the Federal Reserve Board of Governors to issue regulations by July 21, 2012, requiring these companies to establish risk committees; such regulations were to take effect by October 21, 2012.
145. SEC Regulation S-K Item 406. While the SEC's rules do not explicitly require board oversight of this code of ethics, given the seniority of the officers involved and the subject matter, responsibility to adopt and oversee the code will usually be a board responsibility and often falls within the audit committee's responsibilities.
146. SEC Regulation S-K Item 406(c).
147. NYSE Listed Company Manual Section 303A.10. Many companies adopt one code of conduct and ethics that meets NYSE and SOX Section 406 requirements; other companies adopt separate codes for NYSE and SOX Section 406 purposes.
148. Nasdaq Equity Rule 5610; Nasdaq IM-5610.
149. NYSE Listed Company Manual Section 303A.10.
150. Nasdaq Equity Rule 5610.
151. Website Posting Requirement and Disclosure Requirements of NYSE Listed Company Manual Section 303A.10. *See also* SEC Regulation S-K Item 406(c).
152. Nasdaq Equity Rule 5610.
153. Item 5.05 of Form 8-K. Note, however, Forms 20-F and 40-F provide that a foreign private issuer may disclose any change to or waiver from the Code of Business Conduct and Ethics on a Form 6-K or its website.
154. Disclosure Requirements of NYSE Listed Company Manual Section 303A.10.
155. Nasdaq Equity Rule 5610.
156. NYSE Listed Company Manual Section 303A.09.
157. Website Posting Requirement and Disclosure Requirements of NYSE Listed Company Manual Section 303A.09.
158. NYSE Listed Company Manual Section 303A.00.
159. Nasdaq Equity Rule 5615.
160. In the case of FPIs with a two-tier board system, the audit committee should be formed from the supervisory or non-management board of directors. *See* Exchange Act Rule 10A-3(e)(2).
161. NYSE Listed Company Manual Section 303A.00.
162. Nasdaq Equity Rule 5615(a)(3).
163. Exchange Act Rule 10A-3(b)(iv)(C)-(E) and Rule 10A-3(c)(3).
164. Disclosure Requirement of NYSE Listed Company Manual Section 303A.11. If this disclosure is provided on a company website, the company must disclose in its annual report filed with the SEC that it is including such disclosure on its website and provide the website address.
165. Dodd-Frank Section 952; Exchange Act Rule 10C-1(b)(iii)(A)(4).
166. Nasdaq Equity Rule 5615(a)(3).
167. Nasdaq IM-5615-3.
168. NYSE Listed Company Manual Section 303A.12(a).
169. After the initial certification, companies only need to file an updated certification form if a change in the company's status results in the prior certification no longer being accurate. For example, if a company indicated on its certification that it was not subject to a requirement because it was a controlled company, that company must submit a new form if it ceases to be a controlled company. Similarly, a foreign private issuer that relied on an exemption in its certification would have to file a new certification if the company ceased to be a foreign private issuer. Nasdaq Corporate Governance Frequently Asked Questions, "Notifications and Forms," *available at* https://listingcenter.nasdaqomx.com/Material_Search.aspx?cid=16&mcd=LQ.
170. NYSE Listed Company Manual Section 303A.12(b).
171. Nasdaq Equity Rule 5625.
172. NYSE Listed Company Manual Section 303A.12(c).

Endnotes (continued)

173. NYSE Listed Company Manual Section 303A.12(c). A Domestic Company Section 303A Interim Written Affirmation must be filed upon the occurrence of one of the following events: (a) a director who was deemed independent is no longer independent; (b) a director who was not deemed independent is deemed independent; (c) a director has been added to or has left the company's board (note that according to the NYSE, a director who does not stand for re-election has not "left" the board, so this event does not need to be reported on an Interim Written Affirmation unless the company would be non-compliant with any of the NYSE board structure requirements); (d) the composition of the audit, nominating/corporate governance, or compensation committee (or any other committee to which the duties of the nominating/governance or compensation committee has been delegated) has changed; (e) the company or a member of its audit committee is eligible to rely on and is choosing to rely on an Exchange Act Rule 10A-3 exemption; (f) the company is no longer or has become a controlled company for purposes of Section 303A of the NYSE Listed Company Manual; or (g) the company no longer qualifies as a foreign private issuer.
174. NYSE Listed Company Manual Section 303A.13. Delisting procedures are governed by Chapter 8 of the NYSE Listed Company Manual.
175. In December 2012, the SEC approved amendments to Nasdaq Equity Rules 5250(b)(2) and 5810(b), requiring each company that receives a deficiency notification to describe in its public disclosure each specific basis and concern identified by Nasdaq in reaching its determination that the company did not meet the listing standard. Additionally, the amended rules permit Nasdaq to make a public announcement of the deficiency notification. SEC Release No. 34-68343, File No. SR-NASDAQ-2012-118 (December 3, 2012). The imposition of sanctions is governed by Nasdaq Equity Rules 5805 through 5840.
176. NYSE Listed Company Manual Section 303A.00.
177. NYSE Listed Company Manual Section 303A.00.
178. Nasdaq Equity Rule 5615(b). Note that Nasdaq does not specifically permit compliance with corporate governance requirements to be phased-in with respect to a company that lists on Nasdaq in connection with a carve-out or spin-off transaction, or that ceases to qualify as a foreign private issuer.

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Weil's Public Company Advisory Group advises public companies and their stakeholders on the complex disclosure, compliance and governance issues they face in the post-Dodd-Frank/SOX environment.

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