

## Weil, Gotshal &amp; Manges LLP

**Board of Director Composition and Function Requirements\***(As of June 1, 2011)<sup>1</sup>

*The following chart summarizes the corporate governance requirements relating to the composition and functions of the board of directors of companies having shares traded on the New York Stock Exchange (the “NYSE”) or the Nasdaq Stock Market (“Nasdaq”), as established under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the “Dodd-Frank Act”), the Sarbanes-Oxley Act of 2002, as amended (“SOXA”), the Securities Exchange Act of 1934, as amended (the “Exchange Act”), rules of the U.S. Securities and Exchange Commission (the “SEC”) and the Public Company Accounting Oversight Board (the “PCAOB”), and the corporate governance listing standards of the NYSE and Nasdaq.<sup>2</sup>*

*Certain companies are excluded from some of these corporate governance requirements:*

- *Listed companies organized outside of the U.S. that qualify as “foreign private issuers” (as defined in Rule 3b-4(c) under the Exchange Act) are required to comply with most of the listing standards regarding audit committees (with certain variations where home country requirements differ), but generally need not comply with any other provision that conflicts with home country practices. Foreign private issuers are required to provide certain disclosures if they choose to follow home country requirements instead of those required to be followed by domestic companies under applicable listing standards.<sup>3</sup>*
- *“Controlled companies” (companies in which more than 50% of the voting power for the election of directors is held by an individual, a group<sup>4</sup> or another company) need not comply with the listing standards regarding majority board independence or the independence requirements relating to certain compensation and nominating decisions and, in the case of the NYSE, corporate governance committees. Reliance on the controlled company exemption must be disclosed in the company’s annual proxy statement (or, if the company does not file a proxy statement, in its annual report on Form 10-K) along with the basis for the determination that the exemption applies, in accordance with the requirements of Item 407(a) of Regulation S-K.<sup>5</sup>*
- *Companies in bankruptcy proceedings and limited partnerships need not comply with the listing standards regarding majority board independence or the independence requirements relating to certain compensation and nominating decisions and, in the case of the NYSE, corporate governance committees.<sup>6</sup>*
- *Investment companies registered under the Investment Company Act of 1940, as amended, are generally subject to the same corporate governance listing*

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standards applicable to operating companies but with variations on specific requirements pertinent to their status,<sup>7</sup> and passive investment entities such as royalty trusts and securitization vehicles generally are not subject to the corporate governance listing standards.

Newly-listed companies are required to comply with the corporate governance listing standards upon listing, except that they may elect to phase-in compliance with certain requirements:

- For NYSE companies, see the Appendix.
- Nasdaq companies that have become newly listed as a result of completing an initial public offering or upon emerging from bankruptcy proceedings or that have ceased to be “controlled companies” may phase in their compliance with committee independence requirements by having one independent director on the committee at the time of initial listing or change from controlled company status (as applicable), a majority of independent committee members within 90 days after the listing or change of status and achieving full compliance within one year. They also have a one-year period to satisfy the requirement regarding majority board independence.<sup>8</sup>
- For a Nasdaq listed company that continued its listing during a bankruptcy proceeding (and may have relied during the proceeding on the exemption from some of the corporate governance listing standards described above), to continue its listing upon emergence from bankruptcy, it must at such time come into compliance with all the corporate governance listing standards.
- Upon the transfer of the listing of a company from another market to Nasdaq, certain transition provisions apply to the requirement that the company comply with Nasdaq’s corporate governance listing standards.<sup>9</sup>

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## ROLE AND AUTHORITY OF INDEPENDENT DIRECTORS

### STATUTORY / REGULATORY REQUIREMENTS

Neither SOXA nor the Dodd-Frank Act addresses the role and authority of independent directors in general. However, SOXA does require director independence for audit committee membership (*See* “Audit Committee Requirements” below) and the Dodd-Frank Act requires director independence for compensation committee membership. (*See* “Compensation Committee Requirements” below.)

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p><b><u>Majority of Independent Directors.</u></b> Independent directors must comprise a majority of the board.<sup>10</sup> (<i>See</i> “Definition of ‘Independent’ Director” below.)</p>	<p><b><u>Majority of Independent Directors.</u></b> Independent directors must comprise a majority of the board.<sup>11</sup> (<i>See</i> “Definition of ‘Independent’ Director” below.)</p>
<p><b><u>Cure.</u></b> The NYSE listing standards do not contain specific cure provisions for violations of the requirement that a majority of directors be independent. The NYSE’s general procedures for listing standard violations apply in such instances. (<i>See</i> “Enforcement” below.)</p>	<p><b><u>Cure.</u></b> If a company fails to comply with the majority independent director requirement due to a vacancy on the board or because a director is no longer independent for reasons that are beyond the director’s reasonable control, the company has at least 180 days to comply.<sup>12</sup> A company relying on this provision must notify Nasdaq upon learning of the non-compliance. (<i>See</i> “Enforcement” below.)</p>
<p><b><u>Controlled Company Exemption.</u></b> “Controlled companies” (of which more than 50% of the voting power for the election of directors is held by an individual, a group or another company) are not required to have a majority of independent directors.<sup>13</sup></p>	<p><b><u>Controlled Company Exemption.</u></b> “Controlled companies” (of which more than 50% of the voting power for the election of directors is held by an individual, a group or another company) are not required to have a majority of independent directors.<sup>14</sup></p>
<p><b><u>Executive Sessions.</u></b> Non-management directors must meet in regularly scheduled executive sessions (without members of management present).<sup>15</sup> If the regularly scheduled executive sessions of the non-management directors include non-independent directors, then an executive session with only independent directors must be scheduled at least once a year. A company may choose to hold regular sessions of independent directors only.<sup>16</sup></p>	<p><b><u>Executive Sessions.</u></b> Boards must convene regular meetings of independent directors in executive session (without members of management present).<sup>17</sup> Executive sessions should occur at least twice a year.<sup>18</sup></p>

**ROLE AND AUTHORITY OF INDEPENDENT DIRECTORS (continued)**

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p><b><u>Presiding Directors.</u></b> A non-management director must preside at the executive sessions, although the same director is not required to preside at all executive sessions.<sup>19</sup> Annually, the name of the director presiding at the executive sessions, or the procedure by which the presiding director is selected for each executive session, must be disclosed on the company’s website or in the proxy statement (or, if the company does not file a proxy statement, in the company’s annual report on Form 10-K), together with information about how interested parties can communicate with the presiding director or the non-management directors as a group.<sup>20</sup></p>	<p><b><u>Presiding Directors.</u></b> The Nasdaq listing standards do not address the leadership of executive sessions.</p>
<p><b><u>Committee Independence Requirements.</u></b> In addition to an independent audit committee<sup>21</sup> (<i>see</i> “Audit Committee Requirements” below), companies must have:</p> <ul style="list-style-type: none"> <li>• an independent compensation committee<sup>22</sup> (<i>see</i> “Compensation Committee Requirements” below); and</li> <li>• an independent nominating/corporate governance committee<sup>23</sup> (<i>see</i> “Nominating/Corporate Governance Committee Requirements” below).</li> </ul> <p>Companies may allocate the responsibilities of the compensation and nominating/corporate governance committees to committees of their own denomination, provided that the committees are comprised entirely of independent directors.<sup>24</sup></p>	<p><b><u>Committee Independence Requirements.</u></b> In addition to an independent audit committee<sup>25</sup> (<i>see</i> “Audit Committee Requirements” below), companies must have:</p> <ul style="list-style-type: none"> <li>• CEO and executive officer compensation determined or recommended to the board for approval by an independent compensation committee or by a majority of the independent directors.<sup>26</sup> (The CEO may not be present for voting or deliberations regarding his/her compensation) (<i>see</i> “Compensation Committee Requirements” below); and</li> <li>• director nominees selected or recommended for the board’s selection by an independent nominating committee or by a majority of the independent directors<sup>27</sup> (<i>see</i> “Nominating/Corporate Governance Committee Requirements” below).</li> </ul> <p>Note however that one non-independent director who is not an officer or employee or a family member of an officer or employee may serve on the audit, nominating or compensation committee (in each case, comprised of at least</p>

**ROLE AND AUTHORITY OF INDEPENDENT DIRECTORS (continued)**

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
	<p>three members) for a period of no longer than two years (and not as the chair of the audit committee) if the board of directors, under “exceptional and limited circumstances,” determines that membership on the committee by that person is in the best interests of the company and its shareholders. A company that relies on this exception must disclose either on the company’s website or in the annual proxy statement (or, if the company does not file a proxy statement, in its annual report on Form 10-K) the nature of the relationship and the reasons for the determination. The company must also provide the disclosure required by Item 407(d)(2) of Regulation S-K (in relation to the audit committee) or Instruction 1 to Item 407(a) of Regulation S-K (in relation to the compensation and nominating committees) in its proxy statement or annual report regarding its reliance on this exception.<sup>28</sup></p>

## DEFINITION OF “INDEPENDENT” DIRECTOR

### STATUTORY / REGULATORY REQUIREMENTS<sup>29</sup>

The Dodd-Frank Act and SOXA establish independence standards for particular purposes but not for directors in general. An “independent director” is defined in Section 301 of SOXA for audit committee purposes (only) as one who does not accept any compensation from the company (other than as a director) and is not an “affiliated person” of the company or any subsidiary. (See “Audit Committee Requirements” below.)<sup>30</sup>

Section 952 of the Dodd-Frank Act requires the SEC to direct the stock exchanges<sup>31</sup> to require that a listed company’s compensation committee members be “independent.” The definition of “independence” is to be determined under standards established by the exchanges in accordance with SEC rules after consideration of relevant factors, including (1) the sources of compensation of a director, including any consulting, advisory or other compensatory fee paid by the company to such director, and (2) whether a director is “affiliated” with the company, a subsidiary of the company, or an affiliate of a subsidiary of the company. The SEC must issue rules prohibiting the continued listing of companies that do not meet these independence requirements no later than July 16, 2011. (See “Compensation Committee Requirements” below.)

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p><b><u>Definition.</u></b> An “independent director” is one who the board has affirmatively determined has no “material relationship” with the listed company.<sup>32</sup> This definition applies for all purposes throughout the NYSE listing standards, except that additional restrictions, consistent with Section 301 of SOXA, apply to membership on the audit committee (as discussed below).</p>	<p><b><u>Definition.</u></b> An “independent director” is one who is not an executive officer or employee of the listed company,<sup>33</sup> and who, in the opinion of the board of directors, has no relationship which would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.<sup>34</sup> This definition applies for all purposes throughout the Nasdaq listing standards, except that additional restrictions, consistent with Section 301 of SOXA, apply to membership on the audit committee (as discussed below).</p>
<p><b><u>Independence Criteria.</u></b> For a director to be considered “independent,” the board must affirmatively determine that the director has no “material relationship”<sup>35</sup> with the company “either directly or as a partner, shareholder or officer of an organization that has a relationship with the company.” In addition, a director does not qualify as independent if any of the following “bright-line”</p>	<p><b><u>Independence Criteria.</u></b> For a director to be considered “independent,” the board must affirmatively determine that the director has no relationship that would impair his or her independence, as determined for purposes of the listing standards.<sup>36</sup> In addition, a director does not qualify as independent if any of the following “bright-line” disqualification standards apply:</p>

**DEFINITION OF “INDEPENDENT” DIRECTOR (continued)**

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p>disqualification standards apply:</p> <ul style="list-style-type: none"> <li>• the director is, or has been within the last three years, an employee of the company or an immediate family member<sup>37</sup> of the director is, or has been within the last three years, an executive officer<sup>38</sup> of the company;<sup>39</sup></li> <li>• the director has received, or has an immediate family member who is an executive officer of the company and has received, during any twelve-month period within the last three years, compensation of more than \$120,000 directly from the company (not including compensation received for service as a director, payments under a pension plan or deferred compensation for prior service not contingent in any way on continued service);<sup>43</sup></li> <li>• the director or an immediate family member is a current partner of the company’s internal or external auditor; the director is a current employee of the auditor; an immediate family member is a current employee of the auditor and personally works on the company’s audit; or the director or an immediate family member was within the last three years a partner or employee of the auditor and personally worked on the company’s audit within that time;</li> <li>• the 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 the listed company’s present executive officers at the same time serves or served on that company’s compensation committee;<sup>46</sup> or</li> </ul>	<ul style="list-style-type: none"> <li>• the director is, or has been within the last three years, an employee of the company, or a family member<sup>40</sup> is, or has been within the last three years, an executive officer<sup>41</sup> of the company;<sup>42</sup></li> <li>• the director accepts or a family member who is an executive officer of the company accepts compensation<sup>44</sup> from the company in excess of \$120,000 during any twelve-month period within the last three years (not including compensation received for service as a director, payments under a tax-qualified retirement plan or other non-discretionary compensation for prior services rendered);<sup>45</sup></li> <li>• the director is, or a family member is, a current partner of the company’s outside auditor or was a partner or employee of the company’s outside auditor who worked on the company’s audit at any time during any of the past three years;</li> <li>• the director or a family member is employed as an executive officer of another company where any of the listed company’s current executive officers during the past three years served on the compensation committee of such other company;<sup>47</sup> or</li> </ul>

**DEFINITION OF “INDEPENDENT” DIRECTOR (continued)**

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<ul style="list-style-type: none"> <li>the director is a current employee, 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 the greater of 2% of such other company’s consolidated gross revenues or \$1 million.<sup>48</sup> Charitable contributions are not considered “payments” for purposes of this prohibition. (However, a listed company must disclose on its website or in its annual proxy statement or annual report on Form 10-K any charitable contributions which meet these thresholds.<sup>49,50</sup>)</li> <li>(See “Shareholdings” below regarding disqualifying relationships between directors and parent companies of a listed company.)</li> </ul>	<ul style="list-style-type: none"> <li>the 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 the greater of 5% of the recipient’s consolidated gross revenues or \$200,000.<sup>51</sup> Charitable contributions are considered “payments” for purposes of this prohibition.<sup>52</sup></li> <li>(See “Shareholdings” below regarding disqualifying relationships between directors and parent companies of a listed company.)</li> </ul>
<p><b><u>Independence “Cooling Off” Period.</u></b> Except for the “significant customer/supplier” standard (described in the fifth bullet immediately above), a three-year “cooling off” period applies to the “bright-line” disqualification standards. No individual who has had such a relationship within the “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 or she no longer has such relationship.</p>	<p><b><u>Independence “Cooling Off” Period.</u></b> Except for the “significant customer/supplier” standard (described in the fifth bullet immediately above), a three-year “cooling off” period applies to the “bright-line” disqualification standards. No individual who has had such a relationship within the “cooling off” period, or who is a family member of an individual who had such a relationship, may be considered independent, even though he or she no longer has such relationship.</p>
<p><b><u>Shareholdings.</u></b> “[A]s 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.”<sup>53</sup> However, for purposes of applying the “bright-line”</p>	<p><b><u>Shareholdings.</u></b> “Because 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.”<sup>54</sup> However, for purposes of applying</p>



**DEFINITION OF “INDEPENDENT” DIRECTOR** (continued)

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p>standards of independence, a “parent company” of a listed company is considered as if it were the listed company and, accordingly, if, for example, a director is, or has been within the last three years, an employee or officer of, or has received in any twelve month period more than \$120,000 in compensation from, the parent company of a listed company, or is employed by a company that engaged in business with the parent company to a degree in excess of the specified level, he or she is disqualified from treatment as an independent director. For this purpose, a company is considered the “parent company” of a listed company if the listed company and the parent company are part of a consolidated group of companies for financial reporting purposes, as determined applying U.S. generally accepted accounting principles.<sup>55</sup> In addition, an executive officer (or controlling shareholder) of a more-than-10% shareholder of a listed company may be considered an “affiliated person” and, if so, is disqualified from audit committee service under Rule 10A-3. (See “Audit Committee Requirements” below.)</p>	<p>the “bright-line” standards of independence, a “parent company” of a listed company is considered as if it were the listed company and, accordingly, if, for example, a director is, or has been within the last three years, an employee or officer of, or has received in any twelve month period more than \$120,000 in compensation from, the parent company of a listed company, or is employed by a company that engaged in business with the parent company to a degree in excess of the specified level, he or she is disqualified from treatment as an independent director. For this purpose, a company is considered the “parent company” of a listed company if the listed company is controlled by the parent company and the parent company consolidates in its financial reports the results of the listed company.<sup>56</sup> In addition, an executive officer (or controlling shareholder) of a more-than-10% shareholder of a listed company may be considered an “affiliated person” and, if so, is disqualified from audit committee service under Rule 10A-3. (See “Audit Committee Requirements” below.)</p>
<p><b><u>Disclosure of Director Independence.</u></b> Listed companies must comply with the disclosure requirements set forth in Item 407(a) of Regulation S-K (which requires certain disclosures relating to director independence including transactions and arrangements considered by a board in assessing director independence, to be included in the annual meeting proxy statement and the annual report on Form 10-K).<sup>57</sup></p>	<p><b><u>Disclosure of Director Independence.</u></b> Listed companies must identify which directors are independent in their annual meeting proxy statement or, if they do not file an annual meeting proxy statement, in their annual report on Form 10-K.<sup>58</sup></p> <p><u>Note:</u> Item 407(a) of Regulation S-K requires certain disclosures relating to director independence including transactions and arrangements considered by a board in assessing director independence.</p>

## AUDIT COMMITTEE REQUIREMENTS

### STATUTORY / REGULATORY REQUIREMENTS

The Dodd-Frank Act does not address audit committees. SOXA extensively regulates the composition and function of audit committees.

**Audit Committee Independence.** Under Section 301 of SOXA, the listing standards of every national securities exchange<sup>59</sup> must provide, in accordance with SEC rules, for the independence of the audit committee of every listed company.<sup>60</sup> Specifically, every member of the audit committee of a listed company must be “independent.” Independence is defined in Section 301, and in Exchange Act Rule 10A-3, to have two components:

(i) A director must not accept any direct or indirect consulting, advisory or other compensatory fee<sup>61</sup> from the listed company other than compensation for service as a director. (Unless the listing standard provides otherwise, 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 the listed issuer, provided that such compensation is not contingent in any way on continued service.)

(ii) A director must not be affiliated with the company or its subsidiaries. Rule 10A-3 defines “affiliate” or “affiliated person” 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 “the 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” pursuant to Rule 10A-3(e)(1)(iii). Under a “safe harbor” provision of Rule 10A-3(e)(1)(ii), 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.<sup>62</sup>

Rule 10A-3(b)(1)(iv)(A) provides a transitional exemption for newly listed companies that previously were not reporting companies under the Exchange Act permitting all but one member of the audit committee to not satisfy the independence requirement for 90 days after listing and a minority of the members to not satisfy the requirements for one year after listing. In addition, there are certain exceptions and qualifications to these audit committee independence requirements for listed foreign private issuers, as described below.

**Auditor Oversight; Approval of Non-Audit Work.** Section 301 also requires the audit committee of a listed company to be responsible for 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. In addition, Section 202 of SOXA requires the audit committee to approve all audit services and prohibits an independent auditor from providing any otherwise permissible non-audit services without prior approval of the audit committee (subject to certain exceptions).

**AUDIT COMMITTEE REQUIREMENTS (continued)**

**Authority to Engage Professionals.** Section 301 further provides that audit committees must be authorized to engage independent counsel and other advisers as the committee determines necessary to carry out its duties and must have appropriate funding to compensate the independent auditor and its advisers and to carry on its operations.

**“Whistleblower” Policy.** Section 301 also requires the audit committee to establish procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters and for the confidential, anonymous submission by employees of concerns regarding accounting or auditing matters. Note that Section 806 of SOXA prohibits companies from discharging, demoting or otherwise discriminating against any employee who provides information regarding conduct the employee reasonably believes constitutes a violation of securities or financial fraud laws (i) to any governmental authority, (ii) in any proceeding pending or about to be commenced concerning such a violation or (iii) to any person with supervisory authority over the employee or authorized by the company to investigate such conduct (*e.g.*, the audit committee; auditors; counsel engaged by the committee). Section 929A of the Dodd-Frank Act amends SOXA to clarify that its whistleblower protections apply not just to employees of the public company, but also to employees of the public company’s subsidiaries and other affiliates whose financial information is included in the public company’s consolidated financial statements. The SEC has adopted new Regulation 21F implementing the whistleblower bounty program and anti-retaliation provisions mandated by Section 922(a) of the Dodd-Frank Act. The SEC anticipates that Regulation 21F will become effective on August 12, 2011.<sup>63</sup>

**Required Disclosures.** Any reliance on exemptions to the foregoing audit committee requirements, including the exemptions for certain foreign private issuers discussed below, must be disclosed in accordance with Rule 10A-3(d), along with an assessment of any materially adverse effects on the ability of the audit committee to act independently and to satisfy such requirements and functions. Such disclosure is required in proxy statements or information statements for shareholders’ meetings at which elections for directors are held and in annual reports on Form 10-K. Audit committee membership and various related information must be disclosed in the company’s proxy statement and annual report on Form 10-K pursuant to Item 407(a) of Regulation S-K.

**Audit Committee Financial Expert.** Section 407 of SOXA, as implemented by Item 407(d)(5) of Regulation S-K, requires all companies whose securities trade in the U.S. (even if none of the securities are listed) to disclose in annual reports whether or not the audit committee includes at least one member who is an “audit committee financial expert” and, if not, the reasons why not (subject to certain exceptions). An “audit committee financial expert” is a person who 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 the functioning of audit committees, as a result of:

**AUDIT COMMITTEE REQUIREMENTS (continued)**

- (a) 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,
- (b) experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions,
- (c) experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements, or
- (d) other relevant experience.

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p><b><u>Audit Committee Size.</u></b> Each company must have an audit committee composed of at least three members.<sup>64</sup></p>	<p><b><u>Audit Committee Size.</u></b> Each company must have an audit committee composed of at least three members.<sup>65</sup></p>
<p><b><u>Additional Independence Requirements for Audit Committee Members.</u></b> An audit committee member must meet the independence requirements of Section 301 of SOXA and Rule 10A-3(b)(1) (subject to the exemptions provided for in Rule 10A-3(c), including those providing short-term relief where a member ceases to meet these independence requirements), as well as the other independence requirements of the listing standards.<sup>66</sup></p>	<p><b><u>Additional Independence Requirements for Audit Committee Members.</u></b> An audit committee member must meet the independence requirements of Section 301 of SOXA and Rule 10A-3(b)(1) (subject to the exemptions provided for in Rule 10A-3(c), including those providing short-term relief where a member ceases to meet these independence requirements), as well as the other independence requirements of the listing standards, and must not have participated in the preparation of the financial statements of the company or any current subsidiary at any time during the past three years.<sup>67</sup></p> <p>One director who meets the criteria for independence set forth in Section 301 and is not a current officer, employee or family member of an officer or employee but is otherwise not independent under Nasdaq's independence standards may serve on the committee if the board of directors, under "exceptional and limited circumstances," determines that membership on the committee by that person is in the best interests of the company and its shareholders. A company that relies on this exception must provide the disclosure required by Item 407(d)(2) of</p>

**AUDIT COMMITTEE REQUIREMENTS (continued)**

	Regulation S-K (relating to the nature of the relationship that makes the person not independent and the reasons for the board's determination) in its proxy statement regarding its reliance on this exception. <sup>68</sup>
<b><u>Cure.</u></b> If a company fails to comply with the audit committee composition requirements because an audit committee member is no longer independent for reasons that are beyond the audit committee member's reasonable control, the audit committee member may remain on the audit committee until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply. <sup>69</sup> A company relying on this provision must notify the NYSE upon learning of the non-compliance. (See "Enforcement" below.)	<b><u>Cure.</u></b> If a company fails to comply with the audit committee composition requirements because an audit committee member is no longer independent for reasons that are beyond the audit committee member's reasonable control, the audit committee member may remain on the audit committee until the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply. If a company fails to comply with the requirement that the audit committee have at least three members due to one vacancy on the audit committee, the company has at least 180 days to comply. A company relying on these provisions must notify Nasdaq upon learning of the non-compliance. <sup>70</sup> (See "Enforcement" below.)
<b><u>Financial Literacy/Expertise Requirements.</u></b> Audit committee members must be financially literate, as determined by the board, or must become financially literate within a reasonable period of time following their appointment. In addition, at least one member of the committee (who need not be the committee chair) must have "accounting or related financial management expertise" in the judgment of the board. A board may presume that a person who would be considered an audit committee financial expert under Section 407 of SOXA has accounting or related financial management expertise. <sup>71</sup>	<b><u>Financial Literacy/Expertise Requirements.</u></b> Audit committee members must be able to read and understand fundamental financial statements, including the company's balance sheet, income statement and statement of cash flows, at the time of appointment. In addition, at least one member of the committee will be 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 the individual's financial sophistication. <sup>72</sup> A director who qualifies as an audit committee financial expert under Section 407 of SOXA is presumed to qualify as a financially sophisticated audit committee member. <sup>73</sup>

**AUDIT COMMITTEE REQUIREMENTS (continued)**

<p><b><u>Service on Multiple Audit Committees.</u></b> If an audit committee member simultaneously serves on the audit committees of more than three public companies, the board must determine that such simultaneous service would not impair the ability of the member to effectively serve on the company’s audit committee. The company must disclose the board’s determination that such simultaneous service does not impair the audit committee member’s ability to effectively serve on the company’s audit committee on its website or in its annual proxy statement (or, if the company does not file a proxy statement, in its annual report on Form 10-K).<sup>74</sup></p>	<p><b><u>Service on Multiple Audit Committees.</u></b> The Nasdaq listing requirements do not address service on multiple audit committees.</p>
<p><b><u>Authority Over Auditor Relationships.</u></b> Audit committees must be directly responsible for hiring and firing the company’s independent auditor(s) and have the other responsibilities and authority required by Rule 10A-3 (described below).<sup>75</sup></p>	<p><b><u>Authority Over Auditor Relationships.</u></b> Audit committees must be directly responsible for hiring and firing the company’s independent auditor(s) and have the other responsibilities and authority required by Rule 10A-3 (described below).<sup>76</sup></p>
<p><b><u>Related Person/Conflict of Interest Transactions.</u></b> The NYSE listing standards related to audit committees do not address related person or conflict of interest transactions, but the NYSE Listed Company Manual provides guidance on how boards of directors should oversee related party transactions and endorses audit committee oversight.<sup>77</sup> Companies are also required to adopt and disclose a code of business conduct and ethics that should address, among other matters, conflicts of interest. Audit committee charters often give the audit committee oversight responsibility with respect to code of conduct compliance by senior management. (See “Codes of Conduct and Ethics” below.)</p>	<p><b><u>Related Person/Conflict of Interest Transactions.</u></b> All related person transactions must receive appropriate review and oversight for potential conflict of interest situations on an “ongoing basis” by the audit committee or another independent body of the board.<sup>78</sup> Companies are also required to adopt and disclose a code of business conduct and ethics that should address, among other matters, conflicts of interest. Audit committee charters often give the audit committee oversight responsibility with respect to code of conduct compliance by senior management. (See “Codes of Conduct and Ethics” below.)</p>
<p><b><u>Internal Audit.</u></b> Every listed company must have an internal audit function.<sup>79</sup> The audit committee must have oversight responsibility over such function, as indicated below.</p>	<p><b><u>Internal Audit.</u></b> The Nasdaq listing standards do not address internal audit.</p>
<p><b><u>Audit Committee Charter.</u></b> The audit committee must have a written charter that addresses the committee’s purpose, which</p>	<p><b><u>Audit Committee Charter.</u></b> The audit committee must have a formal, written charter that specifies: (i) the scope of the audit</p>

## AUDIT COMMITTEE REQUIREMENTS (continued)

must include: (i) assisting board oversight of the integrity of the company's financial statements, the company's compliance with legal and regulatory requirements, the independent auditor's qualifications and independence, and the performance of the company's internal audit function and independent auditors; and (ii) preparing the disclosure required by Item 407(d)(3)(i) of Regulation S-K (relating to the audit committee report to be included in the company's annual proxy statement).<sup>80</sup>

The charter must also provide for the duties and responsibilities of the audit committee to include:

- appointing, retaining, compensating and overseeing the work of registered public accounting firms (this includes resolving disagreements between management and such firms);
- establishing procedures for the receipt, retention and treatment of complaints from company employees on accounting, internal accounting controls or auditing matters, as well as for the confidential, anonymous submissions by company employees of concerns regarding questionable accounting or auditing matters; and
- having the authority to engage independent counsel and other advisers as it determines necessary to carry out its duties;<sup>82</sup>

committee's responsibilities, and how it carries out those responsibilities, including structure, processes and membership requirements; (ii) the audit committee's responsibilities for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the outside auditor; and (iii) the committee's purpose of overseeing the accounting and financial reporting processes of the company and the audits of the financial statements of the company.<sup>81</sup>

The charter must also address the authority and responsibilities of the audit committee required by Rule 10A-3, including:

- appointing, retaining, compensating and overseeing the work of registered public accounting firms (this includes resolving disagreements between management and such firms);
- establishing procedures for the receipt, retention and treatment of complaints from company employees on accounting, internal accounting controls or auditing matters, as well as for the confidential, anonymous submissions by company employees of concerns regarding questionable accounting or auditing matters; and
- having the authority to engage independent counsel and other advisers as it determines necessary to carry out its

## AUDIT COMMITTEE REQUIREMENTS (continued)

<p>(Note: The foregoing charter requirements correspond to the requirements of Rule 10A-3.)</p> <ul style="list-style-type: none"> <li>• at least annually obtaining and reviewing a report by the independent auditor describing: (i) the independent auditor’s internal quality control procedures; (ii) any material issues raised by the auditor’s most recent internal quality control review or peer review of the firm, or by any inquiry or investigation by governmental or professional authorities within the preceding 5 years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues; and (iii) to assess the auditor’s independence, all relationships between the independent auditor and the company;<sup>84</sup></li> <li>• meeting to review and discuss the annual audited financial statements and quarterly financial statements with management and the independent auditor, including review of the specific disclosures under “Management’s Discussion and Analysis of Financial Condition and Results of Operations;”<sup>85</sup></li> </ul>	<p>duties.<sup>83</sup></p>
<ul style="list-style-type: none"> <li>• discussing earnings press releases, as well as financial information and earnings guidance that is given to analysts and rating agencies;<sup>86</sup></li> <li>• discussing policies with respect to risk assessment and risk management;<sup>87</sup></li> <li>• meeting separately, from time to time, with management, with the internal auditors and with the independent</li> </ul>	



## AUDIT COMMITTEE REQUIREMENTS (continued)

<p>auditors;</p> <ul style="list-style-type: none"> <li>• reviewing with the independent auditor any audit problems or difficulties and management’s response to such issues;<sup>88</sup></li> <li>• setting clear hiring policies for employees or former employees of the independent auditor;</li> <li>• reporting regularly to the board of directors;<sup>89</sup> and</li> <li>• evaluating the audit committee on an annual basis.<sup>90</sup></li> </ul>	
<p><b><u>Review of Audit Committee Charter.</u></b> The NYSE listing standards do not specifically require an annual review of the audit committee charter.</p>	<p><b><u>Review of Audit Committee Charter.</u></b> Each listed company must certify that the audit committee has reviewed and reassessed the adequacy of its charter on an annual basis.<sup>91</sup></p>
<p><b><u>Disclosure of Audit Committee Charter.</u></b> The company’s website (a requirement for all listed companies<sup>92</sup>) must include the audit committee charter. The proxy statement or annual report on Form 10-K must state that such charter is available on the website and provide the website address.<sup>93</sup></p> <p><u>Note:</u> SEC rules require the comparable disclosure. See under “—Nasdaq Requirements.”</p>	<p><b><u>Disclosure of Audit Committee Charter.</u></b> The Nasdaq listing standards do not address disclosure of the audit committee charter.</p> <p><u>Note:</u> Item 407(d)(1) of Regulation S-K requires companies to disclose in a proxy statement relating to an election of directors whether a current copy of their audit committee charter is available on the company’s website and to provide that address. If not so available, the company should include the charter as an appendix to its proxy statement at least once every three years or in any year in which the charter was materially amended. If the charter is not available on the company’s website and has not been included in the proxy statement filed by the company for that fiscal year, it should disclose the year in which the charter was most recently included in the company’s proxy statement.</p>

**COMPENSATION COMMITTEE REQUIREMENTS****STATUTORY / REGULATORY REQUIREMENTS**

The Dodd-Frank Act regulates the composition and certain of the functions of compensation committees. The Dodd-Frank requirements are to be implemented through rules adopted by the SEC and the stock exchanges, which rules have not yet been adopted. SOXA does not address the role or composition of compensation committees.

**Compensation Committee Independence.** Under Section 952 of the Dodd-Frank Act, the SEC is required to direct the stock exchanges to require that a listed company's compensation committee members be independent. The definition of "independence" is to be determined under standards to be determined by the exchanges in accordance with SEC rules after consideration of relevant factors, including:

- (1) the source of compensation of a member of the board of directors of a company, including any consulting, advisory or other compensatory fee paid by the company to such director; and
- (2) whether a member of the board of directors of a company is affiliated with the company, a subsidiary of the company, or an affiliate of a subsidiary of the company.

An opportunity to cure defects must be provided. In addition to the exemptions discussed below, limited partnerships, companies in bankruptcy proceedings, open-ended registered management investment companies and foreign private issuers that provide annual disclosure to shareholders of reasons why they do not have an independent compensation committee are exempt from this requirement. The national securities exchanges may also exempt a particular relationship if appropriate taking into consideration the size of an issuer and any other relevant factors. The SEC must issue rules prohibiting the continued listing of companies that do not meet these independence requirements no later than July 16, 2011.

**Independence of Compensation Committee Advisers.** In addition, Section 952 requires the SEC to direct the stock exchanges to require that, before selecting a compensation consultant, legal counsel or other adviser to the compensation committee, the compensation committee of each listed company must consider various factors that affect the independence of a compensation consultant, legal counsel or other adviser to the compensation committee. These factors (1) are to be identified by the SEC, (2) must be competitively neutral among categories of consultants, legal counsel or other advisers, and preserve the ability of compensation committees to retain the services of members in any such category, and (3) must include:

- (a) the provision of other services to the company by the person that employs the compensation consultant, legal counsel or other adviser;
- (b) the amount of fees received from the company by the person that employs the compensation consultant, legal counsel or other adviser, as a percentage of the total revenue of such person;

**COMPENSATION COMMITTEE REQUIREMENTS (continued)**

(c) the policies and procedures of the person that employs the compensation consultant, legal counsel or other adviser that are designed to prevent conflicts of interest;

(d) any business or personal relationship of the compensation consultant, legal counsel or other adviser with a member of the compensation committee; and

(e) any stock of the company owned by the compensation consultant, legal counsel or other adviser.

The SEC must issue rules prohibiting the continued listing of companies that do not meet these requirements no later than July 16, 2011.

**Authority to Engage Advisers.** Section 952 also requires the SEC to direct the stock exchanges to require each listed company to authorize its compensation committee, in its sole discretion, to be directly responsible for the appointment, compensation and oversight of the work of compensation consultants, independent legal counsel for the committee and other committee advisers, and to provide for appropriate funding (as determined by the compensation committee) for payment of reasonable compensation to these consultants, legal counsel and advisers. Under the Dodd-Frank Act, this requirement is not to be construed to require the compensation committee to implement or act consistently with the advice or recommendations of its consultants, legal counsel or advisers, or to affect the ability or obligation of a compensation committee to exercise its own judgment in fulfillment of its duties. The SEC must issue rules prohibiting the continued listing of companies that do not meet these requirements no later than July 16, 2011.

**Required Disclosures.** Section 952 further requires the SEC to direct the stock exchanges to require that each listed company disclose in its annual meeting proxy statement (or proxy statement for a special meeting in lieu of the annual meeting) whether the compensation committee retained or obtained the advice of a compensation consultant, whether the work performed by such consultant raised a conflict of interest, and, if so, the nature of such conflict and how it is being addressed. This disclosure must be included in proxy statements for annual meetings held on or after July 21, 2011.

**Exemptions.** “Controlled companies” are exempt from the requirements of Section 952 of the Dodd-Frank Act. “Controlled company” means a company that is listed on a stock exchange and holds an election for the board of directors of the company in which more than 50 percent of the voting power is held by an individual, a group or another company. In addition, the SEC may allow the exchanges to exempt other categories of companies, particularly taking into account the potential impact on smaller issuers.

**COMPENSATION COMMITTEE REQUIREMENTS (continued)**

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p><b><u>Compensation Committee.</u></b> Each listed company must have a compensation committee composed only of independent directors.<sup>94</sup></p>	<p><b><u>Compensation Committee.</u></b> CEO and other executive officer compensation must be determined or recommended to the board for approval by a compensation committee that is composed only of independent directors or, if no such committee exists, by independent directors constituting a majority of the board's independent directors in a vote in which only the independent directors participate. The CEO may not be present for voting or deliberations by the compensation committee or the independent directors, as the case may be, regarding his/her compensation.<sup>95</sup></p> <p>One non-independent director who is not an officer or employee or a family member of an officer or employee may serve on the compensation committee (of at least three members) for a period of no longer than two years if the board of directors, under "exceptional and limited circumstances," determines that membership on the committee by that person is in the best interests of the company and its shareholders. A company that relies on this exception must disclose either on the company's website or in the annual proxy statement (or, if the company does not file a proxy statement, in its annual report on Form 10-K) the nature of the relationship and the reasons for the determination. The company must also provide the disclosure required by Instruction 1 to Item 407(a) of Regulation S-K in its proxy statement or annual report regarding its reliance on this exception.<sup>96</sup></p>
<p><b><u>Compensation Committee Charter.</u></b> The compensation committee must have a written charter that addresses:</p> <ul style="list-style-type: none"> <li>the committee's purpose and responsibilities, which must include: (i) reviewing and approving corporate goals and objectives relevant to CEO compensation, evaluating the CEO's performance in light of those goals and objectives, and, either as a committee or</li> </ul>	<p><b><u>Compensation Committee Charter.</u></b> Nasdaq does not require a compensation committee charter; however, Nasdaq requires independent director oversight of executive officer compensation (see above).</p>

**COMPENSATION COMMITTEE REQUIREMENTS (continued)**

<b>NYSE REQUIREMENTS</b>	<b>NASDAQ REQUIREMENTS</b>
<p>together with the other independent directors (as directed by the board), determining and approving the CEO's compensation level based on such evaluation;<sup>97</sup> (ii) making recommendations to the board with respect to non-CEO executive officer compensation, and incentive-compensation and equity-based plans<sup>98</sup> that are subject to board approval;<sup>99</sup> and (iii) preparing the disclosure required by Item 407(e)(5) of Regulation S-K (relating to the compensation committee report recommending the "Compensation Discussion and Analysis" to be included in the company's annual proxy statement or in the company's annual report on Form 10-K); and</p> <ul style="list-style-type: none"> <li>• an annual performance evaluation of the compensation committee.<sup>100</sup></li> </ul> <p>A board may allocate the responsibilities of the compensation committee to committees of its own denomination, provided that the committees are composed entirely of independent directors. Any such committee must have a committee charter.<sup>101</sup></p> <p>The 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. In addition, the charter should give the committee sole authority to retain and terminate any consulting firm that assists it in the evaluation of director or executive officer compensation, including sole authority to approve such firm's compensation and other retention terms.<sup>102</sup></p>	
<p><b><u>Controlled Company Exemption.</u></b> "Controlled companies" (of which more than 50% of the voting power for the election of</p>	<p><b><u>Controlled Company Exemption.</u></b> "Controlled companies" (of which more than 50% of the voting power for the election of</p>

**COMPENSATION COMMITTEE REQUIREMENTS (continued)**

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p>directors is held by an individual, a group or another company) are not required to comply with the requirements relating to compensation committees.<sup>103</sup></p>	<p>directors is held by an individual, a group or another company) are not required to comply with the requirements relating to independent director oversight of executive compensation.<sup>104</sup></p>
<p><b><u>Disclosure of Compensation Committee Charter.</u></b> A listed company’s website must include the charter of the compensation committee (and any other committee to which the compensation committee has delegated its functions). The proxy statement or annual report on Form 10-K must state that the charter is available on the website and provide the website address.<sup>105</sup></p> <p><u>Note:</u> SEC rules require the comparable disclosure. See under “—Nasdaq Requirements.”</p>	<p><b><u>Disclosure of Compensation Committee Charter.</u></b> The Nasdaq listing standards do not address disclosure of the compensation committee charter.</p> <p><u>Note:</u> Item 407(e)(2) of Regulation S-K requires companies to disclose in a proxy statement relating to an election of directors whether a current copy of the compensation committee charter is available on the company’s website and to provide that address. If not so available, the company should include the charter as an appendix to its proxy statement at least once every three years or in any year in which the charter was materially amended. If the charter is not available on the company’s website and has not been included in the proxy statement filed by the company for that fiscal year, it should disclose the year in which the charter was most recently included in the company’s proxy statement.</p>

**NOMINATING/CORPORATE GOVERNANCE COMMITTEE REQUIREMENTS****STATUTORY / REGULATORY REQUIREMENTS**

Neither the Dodd-Frank Act nor SOXA addresses the role or composition of nominating/corporate governance committees.

<b>NYSE REQUIREMENTS</b>	<b>NASDAQ REQUIREMENTS</b>
<p><b><u>Nominating/Corporate Governance Committee.</u></b> Each listed company must have a nominating/corporate governance committee composed only of independent directors.<sup>106</sup></p>	<p><b><u>Nominating/Corporate Governance Committee.</u></b> Nasdaq does not require a board to establish a nominating/corporate governance committee. However, Nasdaq requires all director nominees to be selected or recommended for the board’s selection by a nominating committee composed only of independent directors or, if no such committee exists, by independent directors constituting a majority of the board’s independent directors in a vote in which only the independent directors participate.<sup>107</sup></p> <p>One non-independent director who is not an officer or employee or a family member of an officer or employee may serve on the nominating committee (of at least three members) for a period of no longer than two years if the board of directors, under “exceptional and limited circumstances,” determines that membership on the committee by that person is in the best interests of the company and its shareholders. A company that relies on this exception must disclose either on the company’s website or in the annual proxy statement (or, if the company does not file a proxy statement, in its annual report on Form 10-K) the nature of the relationship and the reasons for the determination. The company must also provide the disclosure required by Instruction 1 to Item 407(a) of Regulation S-K in its proxy statement or annual report regarding its reliance on this exception.<sup>108</sup></p>

**NOMINATING/CORPORATE GOVERNANCE COMMITTEE REQUIREMENTS  
(continued)**

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p><b><u>Nominating/Corporate Governance Committee Charter.</u></b> The nominating/corporate governance committee must have a written charter that addresses:</p> <ul style="list-style-type: none"> <li>• the committee’s purpose and responsibilities, which must include: (i) identifying individuals who are qualified to become board members consistent with criteria approved by the full board (ii) selecting, or recommending that the board select, the director nominees for the next annual meeting of shareholders; (iii) developing and recommending to the board a set of corporate governance guidelines for the corporation; and (iv) overseeing the evaluation of the board and management;<sup>109</sup> and</li> <li>• an annual performance evaluation of the committee.<sup>110</sup></li> </ul> <p>A board may allocate the responsibilities of the nominating/corporate governance committee to committees of its own denomination, provided that the committees are composed entirely of independent directors. Any such committee must have a committee charter.<sup>111</sup></p> <p>The 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. In addition, the charter should give the committee sole authority to hire and fire any search firm to be used to identify director candidates, including sole authority to approve the search firm’s fees and other retention terms.<sup>112</sup></p>	<p><b><u>Nominating/Corporate Governance Committee Charter.</u></b> Listed companies must address, by provision in a written committee charter or by board resolution, as applicable: (i) a process for the selection by the board of directors of nominees for election by the shareholders; and (ii) such other matters relating to director nominations as may be required under the federal securities laws (such as a policy regarding the consideration that will be given to candidates for nomination by the board proposed by securityholders, which public companies are required to disclose in a proxy statement for the election of directors<sup>113</sup>).<sup>114</sup></p>



**NOMINATING/CORPORATE GOVERNANCE COMMITTEE REQUIREMENTS  
(continued)**

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p><b><u>Exceptions.</u></b> If the company is required by contract or otherwise to provide a party the ability to nominate one or more directors, the selection and nomination of such directors need not be subject to the required independent nominating committee process.<sup>115</sup></p>	<p><b><u>Exceptions.</u></b> Where the right to nominate a director legally belongs to a third party by reason of a lawful arrangement, the provision for nomination of directors by independent directors does not apply to such director nominee.<sup>116</sup></p>
<p><b><u>Controlled Company Exemption.</u></b> “Controlled companies” (of which more than 50% of the voting power for the election of directors is held by an individual, a group or another company) are not required to comply with the requirements relating to nominating/corporate governance committees.<sup>117</sup></p>	<p><b><u>Controlled Company Exemption.</u></b> “Controlled companies” (of which more than 50% of the voting power for the election of directors is held by an individual, a group or another company) are not required to comply with the requirements relating to independent director oversight of director nominations.<sup>118</sup></p>
<p><b><u>Disclosure of Nominating/Corporate Governance Committee Charter.</u></b> A listed company’s website must include the charter of the nominating/corporate governance committee (and any other committee to which the nominating/corporate governance committee has delegated its functions). The proxy statement or annual report on Form 10-K must state that the charter is available on the website and provide the website address.<sup>119</sup></p> <p><b>Note:</b> SEC rules require the comparable disclosure. See under “—Nasdaq Requirements.”</p>	<p><b><u>Disclosure of Nominating/Corporate Governance Committee Charter.</u></b> The Nasdaq listing standards do not address disclosure of the nominating/corporate governance committee charter.</p> <p><b>Note:</b> Item 407(c)(2)(i) of Regulation S-K requires companies to disclose in a proxy statement relating to an election of directors whether a current copy of the nominating committee charter is available on the company’s website and to provide that address. If not so available, the company should include the charter as an appendix to its proxy statement at least once every three years or in any year in which the charter was materially amended. If the charter is not available on the company’s website and has not been included in the proxy statement filed by the company for that fiscal year, it should disclose the year in which the charter was most recently included in the company’s proxy statement.</p>

**OTHER BOARD COMMITTEE REQUIREMENTS****STATUTORY / REGULATORY REQUIREMENTS**

**Board Committee Approval of Certain Swap Transactions.** Sections 723(b) and 763(a) of the Dodd-Frank Act require an “appropriate committee” of any public company filing SEC reports that engages in derivatives activities to review and approve the decision to enter into covered “swap transactions” that rely on the so-called “commercial end-user” exemptions from (1) new Exchange Act requirements to clear a security-based swap or execute a security-based swap through a national securities exchange and (2) new Commodity Exchange Act requirements to clear and execute a swap through a board of trade or swap execution facility. These requirements became effective on July 21, 2010; however, the SEC and the Commodity Futures Trading Commission first must engage in rulemaking to establish new clearance and settlement provisions.

**Mandatory Risk Committees for Certain Financial Companies.** Section 165 of the Dodd-Frank Act requires the following entities to establish a risk committee responsible for the 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 the Federal Reserve Board of Governors has determined that establishment of a risk committee is necessary or appropriate to promote sound risk management.

“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 the U.S. where it has been determined by the Financial Stability Oversight Council that material financial distress at the company would pose a threat to the financial stability of the U.S. (other than bank holding companies or their subsidiaries). The Federal Reserve Board of Governors is required to issue regulations mandating risk committees at these companies by July 21, 2012, to take effect no later than October 21, 2012. Each risk committee must include such number of “independent directors” as the Federal Reserve Board of Governors deems appropriate, with “independence” to be defined by the Federal Reserve Board of Governors.

Each risk committee must also have as a member at least one “risk management expert,” which is defined to mean a person having experience in identifying, assessing and managing risk exposures of large, complex firms.

**DIRECTOR AND OFFICER DISQUALIFICATIONS****STATUTORY / REGULATORY REQUIREMENTS**

**Bar to Future Service.** Pursuant to Section 305 of SOXA, any person found to have violated the general antifraud provision of the Exchange Act, including the provisions of SOXA which amend the Exchange Act, can be barred by a court or the SEC, after notice and a hearing, from serving as a director or officer of a public company if his conduct demonstrates “unfitness” to serve as a director or officer of such a company.

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
None.	None.

**CODES OF CONDUCT AND ETHICS****STATUTORY / REGULATORY REQUIREMENTS**

SOXA establishes certain code of conduct requirements. The Dodd-Frank Act does not address codes of conduct.

**Code of Ethics for Senior Financial Officers and Chief Executive Officers.** Section 406 of SOXA, as implemented by SEC rules (Regulation S-K, Item 406; Form 8-K, Item 5.05), requires companies to disclose in their annual reports whether or not they have adopted a code of ethics applicable to their principal executive officer, principal financial officer and controller or principal accounting officer (and, if not, why not). The code of ethics must include standards reasonably necessary to promote: (i) honest and ethical conduct, including the handling of actual or apparent conflicts of interest between personal and company interests; (ii) full, fair, accurate, timely and understandable disclosure in SEC periodic reports; and (iii) compliance with applicable governmental rules.<sup>120</sup> In addition, the company must promptly disclose by filing a Form 8-K report (or via the company's website) certain changes in or waivers of this code of ethics.<sup>121</sup>

**Misleading or Manipulation of Auditors.** Section 303 of SOXA and SEC Rule 13b2-2 implementing such section provides that no action may be taken by any director or officer (or other person acting under the direction thereof): (i) to mislead an accountant in connection with the conduct of an audit of financial statements to be included in an SEC report or the preparation of any other report or document to be included in an SEC filing by making to the accountant any statement that is materially incorrect or omitting (or causing another person to omit) any information necessary to make information provided to the accountant not misleading; or (ii) to coerce, manipulate, mislead or fraudulently influence any independent auditor of the financial statements to be included in an SEC report if the director or officer knew or should have known that such action, if successful, could render the financial statements materially misleading.

<b>CODES OF CONDUCT AND ETHICS (continued)</b>	
<b>NYSE REQUIREMENTS</b>	<b>NASDAQ REQUIREMENTS</b>
<p><b><u>Code of Business Conduct and Ethics.</u></b> Companies are required to adopt and disclose a Code of Business Conduct and Ethics (beyond the Code of Ethics referred to in Section 406 of SOXA) for directors, officers and employees that addresses:</p> <ul style="list-style-type: none"> <li>• conflicts of interest;</li> <li>• corporate opportunities;</li> <li>• confidentiality;</li> <li>• fair dealing with customers, suppliers, competitors and employees;</li> <li>• protection and proper use of company assets;</li> <li>• compliance with laws, rules and regulations (including insider trading laws); and</li> <li>• encouraging the reporting of any illegal or unethical behavior.</li> </ul>	<p><b><u>Code of Business Conduct and Ethics.</u></b> Companies must adopt a code of conduct for all directors, officers and employees that is publicly available and must, at a minimum, address the matters necessary in order to satisfy the requirements for a qualifying code of ethics for senior financial officers established by the SEC pursuant to Section 406 of SOXA (see above). The code must provide for an enforcement mechanism that ensures prompt and consistent enforcement of the code, protection for persons reporting questionable behavior, clear and objective standards for compliance, and a fair process by which to determine violations. The code must also require that any waiver of the code for executive officers or directors may be made only by the board and must be disclosed to shareholders, along with the reasons for the waiver.<sup>122</sup></p>
<p>The code must contain compliance standards and procedures that will facilitate effective operation of the code, and should ensure prompt and consistent actions against violations.<sup>123</sup></p> <p>The code must also require that any waivers given to directors or executive officers must be approved by the board or a board committee.</p> <p>The company's website must include its code of business conduct and ethics. The proxy statement (or, if the company does not file a proxy statement, its annual report on Form 10-K) must state that such code is available on the website and provide the website address.<sup>124</sup></p>	

**CODES OF CONDUCT AND ETHICS (continued)**

<b>NYSE REQUIREMENTS</b>	<b>NASDAQ REQUIREMENTS</b>
<p><b><u>Waivers.</u></b> The code of conduct and ethics must require that any waivers given to directors or executive officers must be approved by the board or a board committee.<sup>125</sup> Such waivers must be disclosed in a press release, on the company’s website or on Form 8-K within four business days of such determination.<sup>126</sup></p>	<p><b><u>Waivers.</u></b> The code of conduct and ethics must require that any waivers given to directors or executive officers must be approved by the board and disclosed to shareholders, along with the reasons for the waiver. Such waivers must be disclosed in a press release, on the company’s website or on Form 8-K within four business days of such determination. The reasons for the waiver must be included in the disclosure.<sup>127</sup></p>
<p><b><u>Corporate Governance Guidelines.</u></b> Companies are required to adopt and disclose Corporate Governance Guidelines that address:</p> <ul style="list-style-type: none"> <li>• qualification standards for service as a director;</li> <li>• responsibilities of directors;</li> <li>• director access to management and, as necessary, independent advisers;</li> <li>• compensation of directors;</li> <li>• continuing education and orientation of directors;</li> <li>• management succession; and</li> <li>• an annual performance evaluation of the board.<sup>128</sup></li> </ul> <p>The company’s website must include its corporate governance guidelines. The proxy statement or annual report on Form 10-K must state that such guidelines are available on the website and provide the website address.<sup>129</sup></p>	<p><b><u>Corporate Governance Guidelines.</u></b> The Nasdaq listing standards do not address corporate governance guidelines.</p>

<b>EDUCATION AND TRAINING OF DIRECTORS</b>	
<b>STATUTORY / REGULATORY REQUIREMENTS</b>	
<p>Neither the Dodd-Frank Act nor SOXA addresses education and training of directors, except with regard to status as an “audit committee financial expert” under SOXA as discussed above.</p>	
<b>NYSE REQUIREMENTS</b>	<b>NASDAQ REQUIREMENTS</b>
<p><b><u>Director Training.</u></b> Audit committee members are required to satisfy certain educational or experience requirements, as stated above.<sup>130</sup> Listed companies are required to address continuing education and training of directors in their corporate governance guidelines.<sup>131</sup> The NYSE provides information about continuing education opportunities for directors on its website.<sup>132</sup></p>	<p><b><u>Director Training.</u></b> Audit committee members are required to satisfy certain educational or experience requirements, as stated above.<sup>133</sup> Nasdaq provides directors of listed companies with relevant continuing education opportunities concerning governance responsibilities and, among other things, makes educational materials available on its website.<sup>134</sup></p>

**APPLICABILITY TO NON-U.S. COMPANIES****STATUTORY / REGULATORY REQUIREMENTS**

Many of SOXA's provisions (including those referred to above) apply to all companies (organized within or outside the U.S.) that have registered equity or debt securities with the SEC under the Exchange Act or are required to make periodic reports under Section 15(d) of the Exchange Act. However, some provisions, including those regarding audit committee composition and functions, apply only to companies whose equity securities are listed on an exchange. Most provisions of SOXA (but not the provisions regarding audit committee composition and functions, unless the company is simultaneously listed) also apply to companies that have registered a public offering of their securities in the U.S., although compliance is required to continue only during the period when the company has reporting obligations pursuant to Section 15(d) of the Exchange Act (which will be, at the least, until the fiscal year of the company following the fiscal year in which it registered its offering of securities).

The Dodd-Frank Act provides for exemption from its requirements pertaining to compensation committees for a foreign private issuers that provides annual disclosure of the reasons it does not have an independent compensation committee; the pertinent SEC and stock exchange implementing rules have not yet been issued. The Dodd-Frank Act also permits additional exemptions to be provided by the stock exchanges.

**Exemptions Relating to Foreign Private Issuer Audit Committees.** Certain limited exemptions to the independence and other audit committee requirements of Section 301 of SOXA apply to listed companies not organized in the U.S. that qualify as "foreign private issuers" (as defined in Rule 3b-4(c) under the Exchange Act) as set forth in Rule 10A-3(b)(iv)(C)-(E) and Rule 10A-3(c)(3):

- Non-management employees are allowed to sit on the audit committee of the company if the employee is elected or named to the board of directors or audit committee of the company pursuant to the company's governing documents, an employee collective bargaining or similar agreement, or other home country legal or listing requirements.
- One member of the audit committee could be an affiliate of the foreign private issuer if: (i) the "no compensation" prong of the independence requirements is satisfied; (ii) the member in question has only observer status, and is not a voting member or the chair of, the audit committee; and (iii) neither the member in question nor the affiliate is an executive officer.
- One audit committee member could be a representative or designee of a foreign government or foreign governmental entity that is an affiliate of the foreign private issuer if: (i) the "no compensation" prong of the independence test is satisfied; and (ii) the member is not an executive officer of the company.



**APPLICABILITY TO NON-U.S. COMPANIES (continued)**

- Companies that have boards of auditors or statutory auditors (as required in several jurisdictions) would not need to have a separate independent audit committee if: (i) these boards operate under legal or listing provisions that are intended to provide oversight of outside auditors that is independent of management; (ii) membership on the board excludes executive officers of the company; and (iii) certain other requirements are met.

Note that the audit committee of a company with a two-tier board of directors would be formed from the supervisory or non-management board of directors.

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p><b><u>Exemption of Foreign Private Issuers; Disclosures Required.</u></b> The NYSE permits foreign private issuers (as defined in SEC Rule 3b-4) to follow home country practices in lieu of most of its corporate governance standards. However, foreign private issuers are required to comply with most of the audit committee requirements (including committee independence and certain functions) and are also required to promptly notify the NYSE after any executive officer of the company becomes aware of any non-compliance (material or non-material) with any applicable provision of the NYSE corporate governance listing standards and must make the required annual and interim affirmations regarding the company’s governance.<sup>135</sup> (See “Enforcement” below.) In addition, foreign private issuers that are Form 20-F filers must include in the Form 20-F a statement of the significant ways in which their corporate governance practices differ from those required of U.S. companies by the NYSE listing standards. All other foreign private issuers may disclose such differences either on their website or in an annual report filed with the SEC.<sup>136</sup></p>	<p><b><u>Exemption of Foreign Private Issuers; Disclosures Required.</u></b> Nasdaq permits foreign private issuers (as defined in SEC Rule 3b-4) to follow home country practices in lieu of most of its corporate governance standards. However, foreign private issuers are required to comply with most of the audit committee requirements (including committee independence and certain functions) and are also required to promptly notify Nasdaq after any executive officer of the company becomes aware of any non-compliance (material or non-material) with any applicable provision of the Nasdaq corporate governance listing standards. A foreign private issuer must disclose in its filed annual report (or on its website in English if it does not file an annual report with the SEC) any significant ways in which their corporate governance practices differ from those required of U.S. companies by the Nasdaq listing standards, and describe the alternate home country practice followed.<sup>137</sup> Additionally, the first time the exemption is claimed, the issuer must provide a home country lawyer’s certification that the company’s practices are not prohibited by the home country’s laws.<sup>138</sup></p>

**ENFORCEMENT****STATUTORY / REGULATORY REQUIREMENTS**

Rule 10A-3 prohibits the stock exchanges from listing or continuing the listing of securities of a company that is not in compliance with the audit committee requirements of the rule, subject to providing an opportunity for a non-complying company to cure its non-compliance (and subject to the interpretive and any exemptive power which the exchange may have over such requirements as elements of its listing standards). In addition, under Rule 10A-3, each exchange must require a listed company to notify it of any material non-compliance with the audit committee requirements it has established under the rule promptly after an executive officer of a company becomes aware of such non-compliance.

Section 952 of the Dodd-Frank Act bars from listing or continued listing a company that is not in compliance with the Dodd-Frank Act's compensation committee requirements, as such requirements are implemented by the stock exchanges in accordance with SEC rules, subject to providing an opportunity for a non-complying company to cure its non-compliance (and subject to the interpretive and any exemptive power which the exchange may have over such requirements as elements of its listing standards).. The implementing rules of the SEC and exchanges have not yet been issued.

With regard to the additional disclosure and other requirements discussed above, the SEC has authority under the Exchange Act, as amended by the Dodd-Frank Act and SOXA, to promulgate rules and regulations in furtherance of such requirements (which generally should provide it with interpretive and exemptive power with respect to such requirements). A violation of such requirements constitutes a violation of the Exchange Act, for which a broad variety of sanctions may be imposed. (SOXA also establishes certain other sanctions for violation of certain provisions of the SOXA, but not for any of the governance provisions discussed above. The Dodd-Frank Act does not establish sanctions for violations of any of the governance provisions discussed above.)

**ENFORCEMENT (continued)**

<b>NYSE REQUIREMENTS</b>	<b>NASDAQ REQUIREMENTS</b>
<p><b><u>Public Reprimand Letter and Delisting.</u></b> Upon finding a violation of a governance (or other) listing standard, the NYSE may issue a public reprimand letter to the company and may suspend or delist an offending company (except that in the case of a violation of the requirements pertaining to audit committees required by Rule 10A-3 under the Exchange Act, after providing an opportunity to cure such violation as provided by such rule, a reprimand letter will not constitute a sufficient sanction and delisting is required).<sup>139</sup> Delisting procedures are governed by Chapter 8 of the NYSE Listed Company Manual. (Note that notification of delisting or issuance of a public reprimand also triggers Form 8-K disclosure obligations under Item 3.01 thereof.)</p>	<p><b><u>Public Reprimand Letter and Delisting.</u></b> Upon finding a violation of a governance or notification listing standard (other than one pertaining to audit committees required by Rule 10A-3 under the Exchange Act – see above) in respect of which Nasdaq determines that a limitation of listing or delisting is not an appropriate sanction, Nasdaq may issue a public reprimand letter to a listed company. Upon finding a violation of a governance or other listing standard (and in the case of a governance or notification standard where a finding has been made that a public reprimand letter is not an appropriate sanction), Nasdaq may limit the listing or delist an offending company. The imposition of such sanctions are governed by Nasdaq Equity Rules 5805 through 5840. (Note that notification of delisting or issuance of a public reprimand also triggers Form 8-K disclosure obligations under Item 3.01 thereof.)</p>
<p><b><u>Compliance Certification.</u></b> The CEO must certify annually to the NYSE within 30 days after the annual shareholders’ meeting (simultaneous with the annual written affirmation noted below) that he or she is not aware of any violations of the listing standards or state in what respects the standards are not satisfied.<sup>140</sup></p>	<p><b><u>Compliance Certification.</u></b> A Nasdaq company must certify to Nasdaq its compliance with certain corporate governance listing standards.<sup>141</sup></p>
<p><b><u>Notification.</u></b> The CEO must promptly notify the NYSE in writing after any executive officer of the company becomes aware of <i>any</i> non-compliance (material or non-material) with any applicable provision of the listing standards.<sup>142</sup> (Note that such notifications in relation to material non-compliance also trigger Form 8-K disclosure obligations under Item 3.01 thereof.)</p>	<p><b><u>Notification.</u></b> A company is required to promptly notify Nasdaq if an executive officer becomes aware of <i>any</i> non-compliance (material or non-material) with Nasdaq’s corporate governance rules.<sup>143</sup> (Note that such notifications in relation to material non-compliance also trigger Form 8-K disclosure obligations under Item 3.01 thereof.)</p>

**ENFORCEMENT (continued)**

<b>NYSE REQUIREMENTS</b>	<b>NASDAQ REQUIREMENTS</b>
<p><b><u>Affirmations.</u></b> Each company must submit an affirmation annually to the NYSE (within 30 days after its annual meeting), in the form specified by the NYSE, regarding details of its compliance or non-compliance with the NYSE corporate governance listing standards.<sup>144</sup> In addition, each company must submit an interim written affirmation (within 5 business days), in the form specified by the NYSE, each time a change occurs in the composition or independence of the board or any of the committees required by the corporate governance listing standards and certain other matters.<sup>145</sup></p>	<p><b><u>Affirmations.</u></b> Nasdaq listing standards do not address affirmations.</p>

## Appendix

NYSE CORPORATE GOVERNANCE TRANSITIONAL PROVISIONS<sup>146</sup>

<i>Event</i>	<i>Majority of Independent Directors</i>	<i>Independent Audit Committee</i>	<i>Number of Audit Committee Members</i>	<i>Independent Compensation &amp; Nominating Committees</i>	<i>Website Posting of Committee Charters, Governance Guidelines &amp; Code of Conduct</i>
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	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	By date transaction closes
Emergence from bankruptcy	Same as for IPO	Fully independent committee by listing date unless 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
Transfers from another market -- previously	Within 1 year of listing date to extent exchange on which it	Same as for emergence from bankruptcy	Within 1 year of listing date to extent exchange on	Within 1 year of listing date to extent exchange on which it was listed did not have	Within 1 year of listing date to extent exchange on which it was listed

<i>Event</i>	<i>Majority of Independent Directors</i>	<i>Independent Audit Committee</i>	<i>Number of Audit Committee Members</i>	<i>Independent Compensation &amp; Nominating Committees</i>	<i>Website Posting of Committee Charters, Governance Guidelines &amp; Code of Conduct</i>
registered pursuant to Section 12(b) of Exchange Act	was listed did not have same requirement  If substantially similar requirement on other exchange, other exchange's transition period (if any)		which it was listed did not have same requirement  If substantially similar requirement on other exchange, other exchange's transition period (if any)	same requirement  If substantially similar requirement on other exchange, other exchange's transition period (if any)	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 Section 12(g) of Exchange Act	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
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
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	Within 6 months of determination date

## ENDNOTES

<sup>1</sup> This summary reflects the adoption on July 22, 2010 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Also reflected are the amendments to the Nasdaq corporate governance listing standards that became effective on July 22, 2010 (SEC Release No. 34-62554 (July 22, 2010), File No. SR-NASDAQ-2008-014 (June 11, 2010)) and amendments to the NYSE corporate governance listing standards that became effective on January 1, 2010 (SEC Release No. 34-61067 (November 25, 2009); File No. SR-NYSE-2009-89 (August 26, 2009)).

<sup>2</sup> Most of the current corporate governance listing standards of the NYSE and Nasdaq were first approved by the SEC in November 2003, although numerous changes have subsequently been made. *See* SEC Release No. 33-8220 (April 10, 2003); SEC Release No. 34-48745 (November 3, 2003); SEC Release No. 34-49060, File No. SR-NASD-2003-172 (January 12, 2004); SEC Release No. 34-49753, File No. SR-NASD-2004-69 (May 19, 2004); SEC Release No. 34-49901, File No. SR-NASD-2004-80 (June 22, 2004); SEC Release No. 34-52603, File No. SR-NASD-2005-101 (October 13, 2004); SEC Release No. 34-50625, File No. SR-NYSE-2004-41 (November 3, 2004); SEC Release No. 34-51221, File No. SR-NASD-2005-018 (January 31, 2005); SEC Release No. 34-51420, File No. SR-NASD-2005-3 (March 23, 2005); SEC Release No. 34-52896, File No. SR-NASD-2005-116 (December 5, 2005); SEC Release No. 34-52899, File No. SR-NASD-2005-136 (December 6, 2005); SEC Release No. 34-54583, File No. SR-NASDAQ-2006-021 (October 6, 2006); SEC Release No. 34-58029, File No. SR-NASDAQ-2008-053 (June 6, 2008); SEC Release No. 34-58335, File No. SR-NASDAQ-2008-053 (August 8, 2008); SEC Release No. 34-58367, File No. SR-NYSE-2008-75 (August 12, 2008); SEC Release No. 34-59663, File No. SR-NASDAQ-2009-018 (March 12, 2009); SEC Release No. 34-62554 (July 22, 2010), File No. SR-NASDAQ-2008-014 (June 11, 2010); SEC Release No. 34-61067 (November 25, 2009); SEC File No. SR-NYSE-2009-89 (August 26, 2009); SEC Release No. 34-62135; File No. SR-NASDAQ-2010-060 (May 19, 2010); SEC Release No. 34-62554 (July 22, 2010), File No. SR-NASDAQ-2008-014 (June 11, 2010); SEC Release No. 34-61067 (November 25, 2009), File No. SR-NYSE-2009-89 (August 26, 2009), effective Jan. 1, 2010.

<sup>3</sup> NYSE Listed Company Manual Sections 303A.00, 303A.11; Nasdaq Equity Rule 5615(a)(3).

<sup>4</sup> For this purpose, the NYSE looks to the concept of “group” set out in Section 13(d)(3) of the Exchange Act, and expects that generally a group would have an obligation to file a Schedule 13D or 13G with the SEC acknowledging such group status. NYSE Section 303A Corporate Governance Standards Frequently Asked Questions (“NYSE FAQs”). For a group to exist for purposes of the Nasdaq rules, the shareholders must publicly file a notice that they are acting as a group, *e.g.*, a Schedule 13D or 13G report filed with the SEC. Nasdaq IM-5615-5.

<sup>5</sup> NYSE Listed Company Manual Section 303A.00; Nasdaq Equity Rule 5615(c).

<sup>6</sup> *See* NYSE Listed Company Manual Section 303A.00. 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). Under Nasdaq Equity Rule 5110(b), Nasdaq in its discretion may deny continued listing to a company in bankruptcy proceedings, even though it continues to meet all applicable listing requirements.

<sup>7</sup> *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.

<sup>8</sup> Nasdaq Equity Rules 5615(b)(1)-(2), 5615(c)(3).

<sup>9</sup> Nasdaq Equity Rule 5615(b)(3). Specifically, companies that list upon Nasdaq upon transfer from another market that has a corporate governance listing standard that is substantially similar have the remainder of any transition period they would have had while trading in their former market (if any) to comply with such requirement and, to the extent the former market did not have a substantially similar requirement, have one year from the date of listing to come into compliance with the requirement. However, if the company was required to comply with the audit committee requirements of Exchange Act Rule 10A-3 before the transfer, it must continue to comply upon transfer.

<sup>10</sup> NYSE Listed Company Manual Section 303A.01.

<sup>11</sup> Nasdaq Equity Rule 5605(b)(1).

<sup>12</sup> 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).

<sup>13</sup> NYSE Listed Company Manual Section 303A.00.

<sup>14</sup> Nasdaq Equity Rule 5615(c)(2).

<sup>15</sup> NYSE Listed Company Manual Section 303A.03.

<sup>16</sup> Commentary to NYSE Listed Company Manual Section 303A.03.

<sup>17</sup> Nasdaq Equity Rule 5605(b)(2).

<sup>18</sup> Executive sessions may occur more frequently than twice a year in conjunction with regularly scheduled board meetings. Nasdaq IM-5605-2.

<sup>19</sup> Commentary to NYSE Listed Company Manual Section 303A.03.

<sup>20</sup> 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.

<sup>21</sup> NYSE Listed Company Manual Sections 303A.06, 303A.07.

<sup>22</sup> NYSE Listed Company Manual Section 303A.05.

<sup>23</sup> NYSE Listed Company Manual Section 303A.04.

<sup>24</sup> Commentary to NYSE Listed Company Manual Sections 303A.04, 303A.05.

<sup>25</sup> Nasdaq Equity Rule 5605(c).

<sup>26</sup> Nasdaq Equity Rule 5605(d).

<sup>27</sup> Nasdaq Equity Rule 5605(e).

<sup>28</sup> Nasdaq Equity Rules 5605(c)(2)(B), 5605(d)(3), 5605(e)(3).

<sup>29</sup> Item 407 of Regulation S-K requires disclosure of those directors and director nominees that the company identifies as independent under the definition for independence used under the applicable listing standards.

<sup>30</sup> This requirement was implemented through listing standards required by the SEC to be adopted by all stock exchanges pursuant to Rule 10A-3.

<sup>31</sup> Section 952 of the Dodd-Frank Act also applies to listings by a national securities association (of which there currently are none).

<sup>32</sup> 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* discussion *infra* under “Shareholdings.”

<sup>33</sup> 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* discussion *infra* under “Shareholdings.”

<sup>34</sup> Nasdaq Equity Rule 5605(a)(2).

<sup>35</sup> The NYSE listing standards state that a material relationship “can include commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships, among others.” *Also see* Item 404 of Regulation S-K.

<sup>36</sup> Nasdaq IM-5605. This determination need not apply the additional independence standards applicable to audit committee members, as discussed below, except with respect to directors who serve as audit committee members.

<sup>37</sup> 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).

<sup>38</sup> 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.

<sup>39</sup> 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).

<sup>40</sup> 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.

<sup>41</sup> References to “executive officer” mean those officers covered by Exchange Act Rule 16a-1(f). Nasdaq IM-5605. *See supra* note 38.

<sup>42</sup> 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 therefor 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.

<sup>43</sup> 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).

<sup>44</sup> 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.

<sup>45</sup> 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 therefor 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.

<sup>46</sup> 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.

<sup>47</sup> 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.

<sup>48</sup> 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. Companies may have business relationships (as a vendor, for example) with a charitable organization, and payments related to such business relationships are intended to be covered by this test. Note that this requirement is not subject to a “three-year look-back” – 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.

<sup>49</sup> 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).

<sup>50</sup> NYSE Listed Company Manual Section 303A.02(b).

<sup>51</sup> 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 this requirement is not subject to a “three-year look-back” – 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.

<sup>52</sup> 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 IM-5605.

<sup>53</sup> Commentary to NYSE Listed Company Manual Section 303A.02(a).

<sup>54</sup> Nasdaq IM-5605.

<sup>55</sup> 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.

<sup>56</sup> Nasdaq IM-5605.

<sup>57</sup> 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 Item 407(a) of Regulation S-K. SEC Release No. 34-61067; File No. SR-NYSE-2009-89.

<sup>58</sup> Nasdaq Equity Rule 5605(b)(1).

<sup>59</sup> Section 301 of SOXA also applies to listings by a national securities association (of which there currently are none).

<sup>60</sup> However, under SEC 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. In addition, certain categories of listed issuers, such as asset-backed issuers, and the listing of certain securities such as a standardized option, are exempt from Rule 10A-3’s requirements pursuant to sections (c)(4), (5) and (6).

<sup>61</sup> 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).

<sup>62</sup> 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. 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 10A-3(e)(1)(ii).

<sup>63</sup> Implementation of the Whistleblower Provisions of Section 21F of the Securities Exchange Act of 1934, SEC Release No. 34-64545 (May 25, 2011). The SEC’s new whistleblower complaint program will be administered by the newly created 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 until now the SEC could only offer financial incentives to tipsters 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.

<sup>64</sup> NYSE Listed Company Manual Section 303A.07(a). If the audit committee’s membership falls below three members, the listed company ceases to comply with the NYSE listing standards and must give notice thereof to the NYSE. An Item 3.01 Form 8-K report must also be filed with the SEC upon such notice being given. The listed company is subject to delisting in accordance with the NYSE’s delisting procedure but generally an opportunity to cure the non-compliance will be provided. *See* NYSE Listed Company Manual Sections 801.00, 802.01(c), 802.02.

<sup>65</sup> Nasdaq Equity Rule 5605(c)(2)(A). If the audit committee’s membership falls below three members, the listed company ceases to comply with Nasdaq’s listing requirements and must give notice thereof to Nasdaq. An Item 3.01 Form 8-K report must also be filed with the SEC. However, if there is only one vacancy, the company is provided a cure period extending until the earlier of its next annual shareholders meeting or one year to come into

compliance; provided, however, that the company shall have a minimum of 180 days to fill the vacancy. If an audit committee member ceases to be independent “for reasons outside the member’s reasonable control,” the listed company must likewise give notice of such event and the member may remain on the committee for the same time period, and the listed company will be considered in compliance with the listing requirements for such period. However, if this provision is being relied upon, the cure period for dealing with a vacancy may not also be relied upon.

<sup>66</sup> NYSE Listed Company Manual Sections 303A.06, 303A.07(a).

<sup>67</sup> 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.

<sup>68</sup> Nasdaq Equity Rule 5605(c)(2)(B).

<sup>69</sup> Commentary to NYSE Listed Company Manual Section 303A.06.

<sup>70</sup> 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.

<sup>71</sup> Commentary to NYSE Listed Company Manual Section 303A.07(a).

<sup>72</sup> Nasdaq Equity Rule 5605(c)(2)(A).

<sup>73</sup> Nasdaq IM-5605-4.

<sup>74</sup> 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.

<sup>75</sup> NYSE Listed Company Manual Section 303A.06.

<sup>76</sup> Nasdaq Equity Rule 5605(c)(3).

<sup>77</sup> 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.

<sup>78</sup> Nasdaq Equity Rule 5630. For purposes of this rule, a “related person transaction” is one defined as such in Item 404 of Regulation S-K 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.

<sup>79</sup> 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).

<sup>80</sup> NYSE Listed Company Manual Section 303A.07(b)(i).

<sup>81</sup> Nasdaq Equity Rule 5605(c)(1).

<sup>82</sup> NYSE Listed Company Manual Section 303A.07(b)(iii).

<sup>83</sup> Nasdaq Equity Rule 5605(c)(3).

<sup>84</sup> 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).

<sup>85</sup> 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).

<sup>86</sup> 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).

<sup>87</sup> 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).

<sup>88</sup> 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).

<sup>89</sup> 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).

<sup>90</sup> 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).

<sup>91</sup> Nasdaq Equity Rule 5605(c)(1).

<sup>92</sup> NYSE Listed Company Manual Section 307.00.

<sup>93</sup> Website Posting Requirement and Disclosure Requirements of NYSE Listed Company Manual Section 303A.07(b).

<sup>94</sup> NYSE Listed Company Manual Section 303A.05(a).

<sup>95</sup> Nasdaq Equity Rule 5605(d).

<sup>96</sup> Nasdaq Equity Rule 5605(d)(3).

<sup>97</sup> 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.

<sup>98</sup> 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).

<sup>99</sup> 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.

<sup>100</sup> NYSE Listed Company Manual Section 303A.05(b).

<sup>101</sup> Commentary to NYSE Listed Company Manual Section 303A.05.

<sup>102</sup> *Id.* In addition, for all public companies, Nasdaq listed as well as NYSE listed, 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. 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.

<sup>103</sup> NYSE Listed Company Manual Section 303A.00.

<sup>104</sup> Nasdaq Equity Rule 5615(c)(2).

<sup>105</sup> Website Posting Requirement and Disclosure Requirements of NYSE Listed Company Manual Section 303A.05.

<sup>106</sup> NYSE Listed Company Manual Section 303A.04(a).

<sup>107</sup> Nasdaq Equity Rule 5605(e). This procedure does not apply when a third party has a right to nominate a candidate on behalf of the company for a position. A company also need not comply with this director nomination requirement 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.

<sup>108</sup> Nasdaq Equity Rule 5605(e)(3).

<sup>109</sup> 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.

<sup>110</sup> NYSE Listed Company Manual Section 303A.04(b).

<sup>111</sup> Commentary to NYSE Listed Company Manual Section 303A.04.

<sup>112</sup> *Id.*

<sup>113</sup> *See* SEC Regulation 14A, Schedule 14A, Item 7(d)(2)(ii)(E).

<sup>114</sup> Nasdaq Equity Rule 5605(e)(2).

<sup>115</sup> Commentary to NYSE Listed Company Manual Section 303A.04.

<sup>116</sup> Nasdaq Equity Rule 5605(e)(4).

<sup>117</sup> NYSE Listed Company Manual Section 303A.00.

<sup>118</sup> Nasdaq Equity Rule 5615(c)(2).

<sup>119</sup> Website Posting Requirement and Disclosure Requirements of NYSE Listed Company Manual Section 303A.04.

<sup>120</sup> 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.

<sup>121</sup> 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.

<sup>122</sup> Nasdaq Equity Rule 5610; Nasdaq IM-5610.

<sup>123</sup> NYSE Listed Company Manual Section 303A.10.

<sup>124</sup> Website Posting Requirement and Disclosure Requirements of NYSE Listed Company Manual Section 303A.10.

<sup>125</sup> NYSE Listed Company Manual Section 303A.10.

<sup>126</sup> Disclosure Requirements of NYSE Listed Company Manual Section 303A.10.

<sup>127</sup> Nasdaq Equity Rule 5610.

<sup>128</sup> NYSE Listed Company Manual Section 303A.09.

- <sup>129</sup> Website Posting Requirement and Disclosure Requirements of NYSE Listed Company Manual Section 303A.09.
- <sup>130</sup> Commentary to NYSE Listed Company Manual Section 303A.07(a).
- <sup>131</sup> NYSE Listed Company Manual Section 303A.09.
- <sup>132</sup> See <http://www.nyse.com>.
- <sup>133</sup> Nasdaq Equity Rule 5605(c)(2)(A).
- <sup>134</sup> See <http://www.finra.org/Industry/Education/index.htm>.
- <sup>135</sup> NYSE Listed Company Manual Section 303A.00.
- <sup>136</sup> 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.
- <sup>137</sup> Nasdaq Equity Rule 5615(a)(3).
- <sup>138</sup> Nasdaq IM-5615-3.
- <sup>139</sup> NYSE Listed Company Manual Section 303A.13.
- <sup>140</sup> NYSE Listed Company Manual Section 303A.12(a).
- <sup>141</sup> 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, "Certification," available at [https://listingcenter.nasdaqomx.com/Show\\_Doc.aspx?File=FAQsCorpGov.html#Cert1](https://listingcenter.nasdaqomx.com/Show_Doc.aspx?File=FAQsCorpGov.html#Cert1).
- <sup>142</sup> NYSE Listed Company Manual Section 303A.12(b).
- <sup>143</sup> Nasdaq Equity Rule 5625.
- <sup>144</sup> NYSE Listed Company Manual Section 303A.12(c).
- <sup>145</sup> *Id.* 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 or has left the company's board; (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 a 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.
- <sup>146</sup> NYSE Listed Company Manual Section 303A.00.