

APPENDIX B

WEIL, GOTSHAL & MANGES LLP

BOARD OF DIRECTOR COMPOSITION AND FUNCTION REQUIREMENTS*(AS OF SEPTEMBER 11, 2008)¹

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

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.*
- *“Controlled companies” (companies in which more than 50% of the voting power is held by an individual, a group³ 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) along with the basis for the determination that the exemption applies.*
- *Companies in bankruptcy proceedings and limited partnerships (through their general partners) 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.⁴*
- *Investment companies registered under the Investment Company Act of 1940, as amended, are generally subject to the same corporate governance listing standards applicable to operating companies but with variations on specific*

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requirements pertinent to their status,⁵ and passive investment entities such as royalty trusts and securitization vehicles generally are not subject to the 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:

- Companies that are newly listed as a result of completing an initial public offering may phase in their compliance with committee independence requirements by having one independent director on the committee at the time of initial listing, a majority of independent committee members within 90 days after the listing and achieving full compliance within one year.⁶ They also have a one-year period to satisfy the requirement regarding majority board independence.
- Companies that have ceased to be “controlled companies” and companies that are becoming newly-listed on emergence from bankruptcy proceedings have the same phase-in period for satisfying the majority board independence and independence requirements relating to certain compensation and nominating decisions, and (in the case of the NYSE) governance committee requirements as companies that are newly-listed. However, in the case of a Nasdaq listing, a company emerging from bankruptcy that elects not to have an independent compensation and nominating committee and to phase-in its compliance with the committee independence requirements on the required schedule, is required to have a majority of independent directors upon listing.⁷
- 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 one market to another, certain transition provisions apply to the requirement that the company comply with its new market’s corporate governance listing standards.⁸

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ROLE AND AUTHORITY OF INDEPENDENT DIRECTORS

SARBANES-OXLEY ACT / SEC RULEMAKING

SOXA does not address the role and authority of independent directors in general. However, SOXA does require director independence for audit committee purposes. (See “Audit Committee Requirements” below.)

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p><u>Majority of Independent Directors.</u> Independent directors must comprise a majority of the board. (See “Definition of ‘Independent Director’” below.)</p>	<p><u>Majority of Independent Directors.</u> Independent directors must comprise a majority of the board. (See “Definition of ‘Independent Director’” below.)</p>
<p><u>Cure.</u> 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. (See “Enforcement” below.)</p>	<p><u>Cure.</u> 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.⁹ A company relying on this provision must notify Nasdaq upon learning of the non-compliance. (See “Enforcement” below.)</p>
<p><u>Executive Sessions.</u> Non-management directors must meet in regularly scheduled executive sessions (without members of management present). 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.¹⁰</p>	<p><u>Executive Sessions.</u> Boards must convene regular meetings of independent directors in executive session (without members of management present). Executive sessions should occur at least twice a year.¹¹</p>
<p><u>Presiding Directors.</u> A non-management director must preside at the executive sessions.¹² 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 in the proxy statement (or, if the company does not file a proxy statement, in the company’s annual report), together with information about how interested parties can communicate with the presiding director or the non-management directors as a group.</p>	<p><u>Presiding Directors.</u> The Nasdaq listing standards do not address the leadership for executive sessions.</p>

ROLE AND AUTHORITY OF INDEPENDENT DIRECTORS (continued)

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p><u>Committee Independence Requirements.</u> In addition to an independent audit committee, companies must have:</p> <ul style="list-style-type: none"> • an independent nominating/corporate governance committee (<i>see</i> “Other Board Committee Requirements” below for a description of its charter requirements); and • an independent compensation committee (<i>see</i> “Other Board Committee Requirements” below for a description of its charter requirements). <p>Companies may allocate the responsibilities of the nominating/corporate governance and compensation committees to committees of their own denomination, provided that the committees are comprised entirely of independent directors.</p>	<p><u>Committee Independence Requirements.</u> In addition to an independent audit committee, companies must have:</p> <ul style="list-style-type: none"> • director nominees selected or recommended for the board’s selection by an independent nominating committee or by a majority of the independent directors; and • 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. (The CEO may not be present for voting or deliberations regarding his/her compensation.) <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 a nominating or compensation committee (of at least three members) in “exceptional and limited circumstances” as determined by the board of directors and disclosed in the annual proxy statement (or, if the company does not file a proxy statement, in its annual report), for a period of no longer than two years.</p>

DEFINITION OF “INDEPENDENT” DIRECTOR

SARBANES-OXLEY / SEC RULEMAKING¹³

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.)¹⁴

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p>Definition. An “independent director” is one who the board has affirmatively determined has no material relationship with the listed company.¹⁵ 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>Definition. An “independent director” is one who is not an executive officer or employee of the listed company,¹⁶ 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. 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>Independence Criteria. For a director to be considered “independent,” the board must affirmatively determine that the director has no “material relationship”¹⁷ 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” disqualification standards apply:</p> <ul style="list-style-type: none"> • the director is, or has been within the last three years, an employee of the company or an immediate family member¹⁹ of the director is, or has been within the last three years, an executive officer²⁰ of the company;²¹ • the director has received, or has an immediate family member who 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);²⁵ 	<p>Independence Criteria. 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.¹⁸ In addition, a director does not qualify as independent if any of the following “bright-line” disqualification standards apply:</p> <ul style="list-style-type: none"> • the director is, or has been within the last three years, an employee of the company,²² or a family member²³ is, or has been within the last three years, an executive officer²⁴ of the company; • the director or a family member (who is an employee, other than an executive officer, of the company) accepts compensation²⁶ 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);²⁷

DEFINITION OF “INDEPENDENT” DIRECTOR (CONTINUED)

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<ul style="list-style-type: none"> • 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;²⁸ • the director or an immediate family member is, or has been within the last three years, part of an interlocking compensation committee arrangement;²⁹ or • the director is an employee, or an immediate family member is 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 any of the last three fiscal years, exceeds the greater of 2% of such other company’s consolidated gross revenues or \$1 million.³¹ Charitable contributions are not considered “payments” for purposes of this prohibition. (However, a listed company must disclose in its annual proxy statement (or annual report) any charitable contributions which meet these thresholds.)³² <p>(See “Shareholdings” below regarding disqualifying relationships between directors and parent companies of a listed company.)</p>	<ul style="list-style-type: none"> • 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; • the director or a family member is, or during the past three years was, employed as an executive officer of another company at which any of the listed company’s current executive officers during the past three years served on the compensation committee;³⁰ or • the director or a family member is, “a partner in, 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 \$200,000.³³ Charitable contributions are considered “payments” for purposes of this prohibition.³⁴ <p>(See “Shareholdings” below regarding disqualifying relationships between directors and parent companies of a listed company.)</p>
<p><u>Independence “Cooling Off” Period.</u> 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><u>Independence “Cooling Off” Period.</u> 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>

DEFINITION OF “INDEPENDENT” DIRECTOR (CONTINUED)

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p><u>Shareholdings.</u> “[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.” However, for purposes of applying 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 a “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.³⁵</p>	<p><u>Shareholdings.</u> “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.” However, for purposes of applying 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 parent company controls the listed company and consolidates the listed company’s financial statements with its own.</p>
<p><u>Disclosure of Director Independence; Immateriality Determinations.</u> 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.³⁶</p> <p>If the board has determined that a director has a relationship with the listed company that is immaterial, it must also include in the company’s annual meeting proxy statement (or annual report) a specific description of the relationship and the basis for the board’s determination that the relationship is not material.³⁷</p>	<p><u>Disclosure of Director Independence; Immateriality Determinations.</u> 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.</p> <p>The Nasdaq listing standards do not address disclosure of immateriality determinations.</p>

DEFINITION OF “INDEPENDENT” DIRECTOR (CONTINUED)

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p><u>Customized Materiality Standards.</u> A board may adopt categorical standards concerning what relationships it considers “material” in determining director independence, but must disclose such standards. In cases where a categorical standard of materiality has been established and is applicable, a general disclosure may be made that a director is considered independent by reason of the application of such categorical standard, without further explanation. This provision is intended to give investors adequate means for assessing board independence while avoiding excessive disclosure about immaterial relationships.³⁸</p>	<p><u>Customized Materiality Standards.</u> The Nasdaq listing standards do not address customized materiality standards.</p>

AUDIT COMMITTEE REQUIREMENTS

SARBANES-OXLEY ACT / SEC RULEMAKING

Audit Committee Independence. Under Section 301 of SOXA, the listing standards of every national securities exchange and national securities association must provide, in accordance with SEC rules, for the independence of the audit committee of every listed company.³⁹ 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 principal components:

(i) A director must not accept any direct or indirect consulting, advisory or other compensatory fee⁴⁰ 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.” Under a “safe harbor” provision of Rule 10A-3(e)(1)(ii), a person who is not an executive officer or a shareholder owning 10 percent or more of any class of voting securities of a company is deemed not to control the company.⁴¹ Rule 10A-3 provides 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).

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 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).

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, 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 the annual reports filed with the SEC (or incorporated by reference) and in proxy statements or information statements for shareholders’ meetings at which elections for directors are held. Audit committee membership and various related information must be disclosed (or incorporated by reference) in the company’s annual report.⁴²

AUDIT COMMITTEE REQUIREMENTS (continued)

SARBANES-OXLEY ACT / SEC RULEMAKING

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)⁴³ 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:

- (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><u>Audit Committee Size.</u> Each company must have an audit committee composed of at least three members.⁴⁴</p>	<p><u>Audit Committee Size.</u> Each company must have an audit committee composed of at least three members.⁴⁵</p>
<p><u>Additional Independence Requirements for Audit Committee Members.</u> 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.</p>	<p><u>Additional Independence Requirements for Audit Committee Members.</u> 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.⁴⁶ One director who meets the criteria for independence set forth in Section 301 and is not a family member of an officer or employee but is otherwise not independent under Nasdaq’s independence standards may serve on the committee in “exceptional and limited circumstances” as determined by the board of directors and disclosed in the annual proxy statement (or, if the company does not file a proxy statement, in its annual report), for a period of no longer than two years.</p>

AUDIT COMMITTEE REQUIREMENTS (continued)

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p><u>Cure.</u> The NYSE listing standards do not contain specific cure provisions for violations of the audit committee composition requirements. The NYSE’s general procedures for listing standard violations apply in such instances. (See “Enforcement” below.)</p>	<p><u>Cure.</u> 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.⁴⁷ A company relying on these provisions must notify Nasdaq upon learning of the non-compliance. (See “Enforcement” below.)</p>
<p><u>Financial Literacy/Expertise Requirements.</u> 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.</p>	<p><u>Financial Literacy/Expertise Requirements.</u> 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 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. 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.</p>
<p><u>Authority Over Auditor Relationships.</u> Audit committees must be directly responsible for hiring and firing registered public accounting firms, including the independent auditors.</p>	<p><u>Authority Over Auditor Relationships.</u> Audit committees must be directly responsible for hiring and firing registered public accounting firms, including the independent auditors.</p>
<p><u>Related Person/Conflict of Interest Transactions.</u> The NYSE listing standards do not mandate a particular process with respect to review of related person and conflict of interest transactions.⁴⁸</p>	<p><u>Related Person/Conflict of Interest Transactions.</u> All related person transactions must be reviewed on an “on-going basis” and approved by the audit committee or comparable independent body of the board.⁴⁹</p>

AUDIT COMMITTEE REQUIREMENTS (continued)

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p>Internal Audit. Every listed company must have an internal audit function. The audit committee must have oversight responsibility over such function, as indicated below.</p>	<p>Internal Audit. The Nasdaq listing standards do not address internal audit.</p>
<p>Audit Committee Charter. The audit committee charter must specify the committee’s purpose, which 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 an audit committee report that SEC rules require to be included in the company’s annual proxy statement.⁵⁰</p> <p>The charter must also detail the duties and responsibilities of the audit committee, including:</p> <ul style="list-style-type: none"> • appointing, retaining, compensating, evaluating, terminating 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; • having the authority to engage independent counsel and other advisers as it determines necessary to carry out its duties; and 	<p>Audit Committee Charter. The audit committee charter must specify: (i) the scope of the audit 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 issuer and the audits of the financial statements of the issuer.</p> <p>The charter must also detail all of the duties and responsibilities of the audit committee, including:</p> <ul style="list-style-type: none"> • appointing, retaining, compensating, evaluating and terminating the company’s independent auditors⁵¹ (this includes resolving disagreements between management and the independent auditor); • 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.

AUDIT COMMITTEE REQUIREMENTS (continued)

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p>(Note: The foregoing charter requirements correspond to the requirements of Rule 10A-3.)</p> <ul style="list-style-type: none"> • at least annually: (i) obtaining and reviewing a report by the independent auditor describing the independent auditor’s internal quality control procedures; (ii) reviewing any material issues raised by the auditor’s most recent internal quality control review of themselves; and (iii) assessing the auditor’s independence; • meeting to review and discuss the annual audited financial statement and quarterly financial statements with management and the independent auditor, including review of specific disclosures under “Management’s Discussion and Analysis of Financial Condition and Results of Operations;” • discussing earnings press releases, as well as financial information and earnings guidance that is given to analysts and rating agencies; • discussing policies with respect to risk assessment and risk management; • meeting separately, from time to time, with management, with the internal auditors and with the independent auditors; • reviewing with the independent auditor any audit problems or difficulties and management’s response to such issues; • setting clear hiring policies for employees or former employees of the independent auditor; • reporting regularly to the board of directors; and • evaluating the audit committee on an annual basis. <p>The company’s website (a requirement for all listed companies) must include the audit committee charter and the annual report must state that such charter is available on the website and is available in print to any shareholder that requests it.</p>	<p>(Note: The foregoing charter requirements correspond to the requirements of Rule 10A-3.)</p> <p>In addition, each issuer must certify that it has adopted a formal written audit committee charter and that the audit committee has reviewed and reassessed the adequacy of the charter on an annual basis.</p>

OTHER BOARD COMMITTEE REQUIREMENTS

SARBANES-OXLEY ACT / SEC RULEMAKING

SOXA does not address the role or composition of other board committees.

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p>Other Committee Charters. Companies must adopt and disclose charters for their compensation and nominating/corporate governance committees.</p> <p><i>Nominating/Corporate Governance Committee:</i> The nominating/corporate governance committee must be composed only of independent directors and must have a written charter that addresses:</p> <ul style="list-style-type: none"> • 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; and • an annual performance evaluation of the committee. 	<p>Other Committee Charters. Although Nasdaq does not require the board of a listed company to establish a compensation or nominating committee, listed companies must satisfy certain requirements with respect to the selection of the board’s nominees and executive compensation usually performed by a nominating or compensation committee as discussed below and, by provision in a committee charter or by board resolution address: (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).⁵²</p> <p><i>Nominating Committee:</i> All director nominees must be selected or recommended to the board by a nominating committee composed only of independent directors (which in exceptional and limited circumstances may include one director on a three-member committee who does not meet all the independence standards, as discussed above under “Role and Authority of Independent Directors”) or, if no such committee exists, by a majority of the independent directors.⁵³</p> <ul style="list-style-type: none"> • Where the right to nominate a director does not reside with a company by reason of a lawful arrangement, the provision for nomination of directors by independent directors does not apply to such director nominee. However, even though the company does not have the right to nominate such a director, it is still obligated to comply with the requirements of the listing standards regarding the determination of the compensation of executive officers by independent directors and the requirements regarding the composition and functioning of its audit committee.

OTHER BOARD COMMITTEE REQUIREMENTS (continued)

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<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 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.⁵⁴</p> <p>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. This qualification on the requirement that all nominees of the board for election as directors be selected by an independent nominating committee does not relieve a listed company from compliance with any of the other corporate governance listing standards.</p> <p><i>Compensation Committee:</i> The compensation committee must be composed only of independent directors and must have a written charter that addresses:</p> <ul style="list-style-type: none"> • the committee’s purpose and responsibilities, which must include: (i) producing a compensation committee report on executive officer compensation that must be included in the company’s annual proxy statement or in the company’s annual report;⁵⁵ (ii) 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 together with the other independent directors (as directed by the board), determining and approving the CEO’s compensation level based on such evaluation;⁵⁶ and (iii) making recommendations to the board with respect to non-CEO executive officer compensation, and incentive-compensation and equity-based plans⁵⁷ that are subject to board approval;⁵⁸ and • an annual performance evaluation of the compensation committee. 	<p><i>Compensation Committee:</i> 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 (which in exceptional and limited circumstances may include one director on a three-member committee who does not meet all the independence standards, as discussed above under “Role and Authority of Independent Directors”) or, if no such committee exists, by a majority of the independent directors. 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.</p>

OTHER BOARD COMMITTEE REQUIREMENTS (continued)

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
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 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. ⁵⁹	
<i>Disclosure of Committee Charters:</i> A listed company’s website must include the charters of the compensation and nominating/governance committees, and its annual report must state that such charters are available on the website and are also available in print to any shareholder that requests them.	<i>Disclosure of Committee Charters:</i> The Nasdaq listing standards do not address disclosure of committee charters.

DIRECTOR AND OFFICE DISQUALIFICATIONS

SARBANES-OXLEY ACT/SEC RULEMAKING

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

SARBANES-OXLEY ACT / SEC RULEMAKING

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 10 (now reflected in Item 5.05 of Form 8-K)), 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: honest and ethical conduct, including the handling of actual or apparent conflicts of interest between personal and company interests; full, fair, accurate, timely and understandable disclosure in SEC periodic reports; and compliance with applicable governmental rules.⁶⁰ 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.⁶¹

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, would render the financial statements materially misleading.

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p><u>Code of Business Conduct and Ethics.</u> Companies are required to adopt and disclose⁶² 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"> • conflicts of interest; • corporate opportunities; • confidentiality; • fair dealing with customers, suppliers, competitors and employees; • protection and proper use of company assets; • compliance with laws, rules and regulations (including insider trading laws); and • encouraging the reporting of any illegal or unethical behavior. <p>The code must contain compliance standards and procedures that ensure prompt and consistent actions against violations.</p> <p>The company's website must include its code of business conduct and ethics.</p>	<p><u>Code of Business Conduct and Ethics.</u> 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. The code must provide for an enforcement mechanism. 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.⁶³</p>

CODES OF CONDUCT AND ETHICS (continued)	
NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p>Waivers. Any waivers given to directors or executive officers must be approved by the board or a board committee and promptly disclosed.⁶⁴</p>	<p>Waivers. Any waivers given to directors or executive officers must be approved by the board. Such waivers must be promptly disclosed on Form 8-K within four business days. The reasons for the waiver must be included in the disclosure.</p>
<p>Corporate Governance Guidelines. Companies are required to adopt and disclose Corporate Governance Guidelines that address:</p> <ul style="list-style-type: none"> • qualification standards for service as a director; • responsibilities of directors; • director access to management and, as necessary, independent advisers; • compensation of directors; • continuing education and orientation of directors; • management succession; and • an annual performance evaluation of the board. <p>The company’s website must include its corporate governance guidelines.⁶⁵</p>	<p>Corporate Governance Guidelines. The Nasdaq listing standards do not address corporate governance guidelines.</p>

EDUCATION AND TRAINING OF DIRECTORS	
SARBANES-OXLEY ACT / SEC RULEMAKING	
<p>SOXA does not address education and training of directors, except with regard to status as an “Audit Committee Financial Expert” as discussed above.</p>	
NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p>Director Training. Audit Committee members are required to satisfy certain educational or experience requirements, as stated above. Listed companies are required to address continuing education and training of directors in their corporate governance guidelines. The NYSE provides information about continuing education opportunities for directors on its website.⁶⁶</p>	<p>Director Training. Audit Committee members are required to satisfy certain educational or experience requirements, as stated above. 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.⁶⁷</p>

APPLICABILITY TO NON-U.S. COMPANIES

SARBANES-OXLEY ACT / SEC RULEMAKING

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).

Exemptions Relating to Listed 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):

- 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 home country legal or listing requirements.
- The supervisory or non-management board is considered the board of directors for companies that have two-tier boards of directors. The audit committee of such a company could be formed from the supervisory or non-management board.
- One member of the audit committee could be a shareholder, or representative of a shareholder or group, owning more than 50 percent of the voting securities of the company, 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) the member in question is not an executive officer.
- One member of the audit committee could be a representative of a foreign government or foreign governmental entity, if: (i) the "no compensation" prong of the independence requirement is satisfied; and (ii) the member in question is not an executive officer of the company.
- 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.

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

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p><u>Exemption of Foreign Private Issuers; Disclosures Required.</u> 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 material non-compliance 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. (See “Enforcement” below.) In addition, foreign private issuers must disclose either on their websites⁶⁸ or in each annual report the significant ways in which their corporate governance practices differ from those required of U.S. companies by the NYSE listing standards.⁶⁹</p>	<p><u>Exemption of Foreign Private Issuers; Disclosures Required.</u> Nasdaq permits foreign private issuers 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 material non-compliance with any applicable provision of the Nasdaq corporate governance listing standards. In addition, foreign private issuers receiving a going concern qualification on an audit opinion must make a public announcement through the news media, providing the announcement to Nasdaq in advance. Foreign private issuers must disclose in their filed annual reports 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. Additionally, the first time the exemption is claimed, the issuer must provide a home country lawyer’s certification that the issuer’s practices are not prohibited by the home country’s laws.</p>

ENFORCEMENT

SARBANES-OXLEY ACT / SEC RULEMAKING

Rule 10A-3 prohibits the national securities 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.

With regard to the additional disclosure and other requirements discussed above, the SEC has authority under the Exchange Act, as amended by 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 provisions discussed above.)

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p><u>Public Reprimand Letter and Delisting.</u> 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). 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 a Form 8-K disclosure obligations under Item 3.01 thereof.)</p>	<p><u>Public Reprimand Letter and Delisting.</u> 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 Marketplace Rules 4801 through 4816. (Note that notification of delisting or issuance of a public reprimand also triggers Form 8-K disclosure obligations under Item 3.01 thereof.)</p>

ENFORCEMENT (continued)

NYSE REQUIREMENTS	NASDAQ REQUIREMENTS
<p><u>Compliance Certification.</u> 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 stating in what respects the standards are not satisfied. This certification of the CEO, as well as the certifications by the CEO and CFO of the company’s Form 10-K or other annual report filed with the SEC required by Section 302 of SOXA, must be disclosed in the company’s annual report sent to shareholders.⁷⁰</p>	<p><u>Compliance Certification.</u> A Nasdaq company must certify to Nasdaq its compliance with certain corporate governance listing standards.⁷¹ A duly authorized officer must certify annually to Nasdaq that the company complies with the audit committee composition and charter requirements, the nominating procedure requirements, the independent director executive session requirements and the code of conduct requirements.</p>
<p><u>Notification.</u> The CEO must promptly notify the NYSE in writing after any executive officer of the company becomes aware of any material non-compliance with any applicable provision of the listing standards. (Note that this notification also triggers Form 8-K disclosure obligations under Item 3.01 thereof.)⁷²</p>	<p><u>Notification.</u> A company is required to promptly notify Nasdaq if an executive officer becomes aware of any material non-compliance with Nasdaq’s corporate governance rules. (Note that this notification also triggers Form 8-K disclosure obligations under Item 3.01 thereof.)</p>
<p><u>Affirmations.</u> 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.⁷³ In addition, each company must submit an interim written affirmation, 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.⁷⁴</p>	<p><u>Affirmations.</u> Nasdaq listing standards do not address affirmations.</p>

ENDNOTES

¹ This summary reflects the most recent amendment, adopted on August 29, 2006, to Item 404 and the addition of a new Item 407 of Regulation S-K, effective for reports for fiscal years ending after December 15, 2006, amendments to the Nasdaq corporate governance listing standards approved by the SEC on August 8, 2008, and amendments to the NYSE corporate governance listing standards which are effective as of September 11, 2008. *See infra* note 2.

² Most of the current corporate governance listing standards of the NYSE and Nasdaq were approved by the SEC in November 2003. Specifically, on April 10, 2003, the SEC promulgated rules under Section 301 of SOXA, requiring all U.S. stock exchanges and the Nasdaq Stock Market to adopt listing standards setting certain minimum standards regarding the composition and functions of audit committees (Release No. 33-8220). On November 4, 2003, the SEC approved (Release No. 34-48745) revised corporate governance listing standards (as amended) previously filed by the NYSE, adopting a new Section 303A of the NYSE Listed Company Manual, and revised corporate governance listing standards (as amended) previously filed by Nasdaq, adopting a new Marketplace Rule 4350 and related rules, including a definition of “independent director” and other pertinent definitions in Marketplace Rule 4200. On November 3, 2004, (Release No. 34-50625; File No. SR-NYSE-2004-41), January 12, 2004 (Release No. 34-49060; File No. SR-NASD-2003-172), May 19, 2004 (Release No. 34-49753; File No. SR-NASD-2004-69), June 22, 2004 (Release No. 34-49901; File No. SR-NASD-2004-80), January 31, 2005 (Release No. 34-51221; File No. SR-NASD-2005-018), March 23, 2005 (Release No. 34-51420; File No. SR-NASD-2005-3), October 13, 2005 (Release No. 34-52603; File No. SR-NASD-2005-101), December 6, 2005 (Release 34-52896; File No. SR-NASD-2005-16 and Release 34-52899; File No. SR-NASD-2005-136) and October 6, 2006 (Release No. 34-54583; File No. SR-NASDAQ-2006-021), the SEC approved certain amendments, largely of a procedural and clarifying nature, to such NYSE and Nasdaq listing standards.

On June 6, 2008 Nasdaq filed with the SEC proposed rule changes to Nasdaq’s definition of “independent director” which would increase to \$120,000 the “bright line” test with respect to a director’s receipt of compensation from the issuer from \$100,000 (Release No. 34-58029; File No. SR-NASDAQ-2008-053). On August 8, 2008 the SEC granted approval to this rule change (Release No. 34-58335; File No. SR-NASDAQ-2008-053) and the changes became effective on that same date.

On November 23, 2005, the NYSE filed with the SEC proposed changes to Section 303A of the NYSE Listed Company Manual concerning the standards for determining director independence and related disclosure requirements (File No. SR-NYSE-2005-81). Partly in response to the amendments made by the SEC to its director independence disclosure requirements in August 2006 (*i.e.*, new Item 407 of Regulation S-K) on June 20, 2007 the NYSE filed with the SEC an amendment to its proposed changes (File No. SR-NYSE-2005-81 Amendment No. 2). On August 12, 2008 the NYSE filed with the SEC rule changes with respect to two of the proposed amendments included in the June 2007 filing. These changes, effective as of September 11, 2008, increase to \$120,000 the “bright line” test with respect to a director’s receipt of compensation from the issuer from \$100,000 and also include certain changes to the bright line director independence test relating to auditor affiliation with immediate family members (Release No. 34-58367; File No. SR-NYSE-2008-75). The other amendments proposed by the NYSE in June 2007 have not yet been adopted.

Generally, companies listed on the NYSE or Nasdaq in November 2003 were required to comply with such market’s corporate governance listing standards not later than October 31, 2004 (as were companies that listed during the period between November 2003 and October 2004), subject to certain transitional provisions that are no longer available. (Companies that list on the NYSE or Nasdaq currently may have the benefit of certain transitional provisions, as discussed below.) However, listed foreign private issuers were not required to comply with the listing standards applicable to them until July 31, 2005, although they were required to include on their websites or in their annual reports disclosure regarding how their governance practices differed from those required by the listing standards starting with their annual reports distributed after the earlier of their 2004 annual meeting of shareholders or after October 31, 2004. *See infra* notes 68 and 69 regarding this disclosure requirement.

The governance requirements not established by listing standards generally became effective in 2003 or 2004 upon the effectiveness of the implementing rules establishing them, except as indicated below.

³ 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 Corporate Governance Listing Standards Frequently Asked Questions, *available at www.nyse.com* (updated as of February 13, 2004) (“NYSE 2004 FAQs”). Additionally, in Amendment No. 2 to its proposed changes the NYSE has clarified that in order to be deemed a controlled company, more than 50% of the voting power for the election of directors must be held by an individual, group or another company. File No. SR-NYSE-2005-81 Amendment No. 2 (June 20, 2007). 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-4350-4.

⁴ *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 Marketplace Rule 4360. Under Nasdaq Marketplace Rule 4340(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.

⁵ *See* NYSE Listed Company Manual Section 303A.00 and Nasdaq Marketplace Rule 4350(a)(2). A discussion of the variations applicable to registered investment companies are beyond the scope of this summary.

⁶ The NYSE has proposed to revise the initial public offering phase-in requirements such that a newly listed company will have until the earlier of the date of closing of its initial public offering or five business days after that date to have at least one independent member on its nominating committee and at least one independent member on its compensation committee and that the company must be in compliance with the applicable provisions of the SEC’s audit committee requirements (incorporated by reference into NYSE Listed Company Manual 303A.06) as of the date of listing. The NYSE has also proposed that companies that are allowed to transition in their independent audit committee members over the first year of listing may also phase in compliance with the three-person minimum on the same schedule. Alternatively, such companies may choose to have non-independent directors on the audit committee subject to the independent director phase-in requirements. SEC File No. SR-NYSE-2005-81 Amendment No. 2 (June 20, 2007). It is proposed that companies that are initially listing in conjunction with a spin-off or carve-out transaction will have until the date of listing to comply with the SEC’s audit committee requirements as well. SEC File No. SR-NYSE-2005-81 Amendment No. 2 (June 20, 2007).

⁷ For companies that have ceased to be “controlled companies” and companies that are becoming newly-listed on emergence from bankruptcy proceedings, the NYSE has proposed the same phase-in-requirements as those for newly listed companies discussed in note 6 above. The applicable periods for these phase-in requirements will run from the listing date for companies that list upon emergence from bankruptcy and the date that the company’s status changed for companies which cease to be “controlled companies”. SEC File No. SR-NYSE-2005-81 Amendment No. 2 (June 20, 2007).

⁸ Specifically, companies that list upon the NYSE or Nasdaq upon transfer from another market that has a corporate governance listing standard that is substantially the same 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 substantially the same 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. The NYSE has proposed to amend this provision to apply only to companies with securities registered pursuant to Section 12(b) of the Exchange Act that transfer to the NYSE. SEC File No. SR-NYSE-2005-81 Amendment No. 2 (June 20, 2007).

⁹ Companies are required to regain compliance by the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply, the company shall instead have 180 days from such event to regain compliance. Nasdaq Marketplace Rule 4350(c)(1).

¹⁰ The NYSE has proposed to clarify that the required “executive session” may be held among only independent directors (and are not required to also include non-independent, non-management directors, but in the directors’

discretion may do so, although at least one such meeting each year should include only independent directors). SEC File No. SR-NYSE-2005-81 Amendment No. 2 (June 20, 2007).

¹¹ Executive sessions may occur more frequently than twice a year in conjunction with regularly scheduled board meetings. Nasdaq IM-4350-4.

¹² Commentary to NYSE Listed Company Manual Section 303A.03.

¹³ The SEC adopted a new Item 407 to Regulation S-K and Regulation S-B requiring disclosure of those directors and director nominees that the company identifies as independent using the definition for independence the company uses for determining compliance with the applicable listing standards. Rel. Nos. 33-8732A; 34-54302A; SEC File No. S7-03-06 (Aug. 29, 2006).

¹⁴ This requirement was implemented through listing standards required by the SEC to be adopted by all stock exchanges pursuant to Rule 10A-3.

¹⁵ 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. See discussion *infra* under "Shareholdings."

¹⁶ Service within the past three years as an interim CEO for a period of less than a year shall not, once such service ends, be a per se disqualification from independence. Nasdaq IM- 4200(a)(15) See *infra* notes 21 and 27.

¹⁷ 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 the recently adopted amendments to Item 404 of Regulation S-K.

¹⁸ Nasdaq IM- 4200. 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.

¹⁹ 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. The NYSE has proposed amending the definition of "immediate family member" to clarify that it does not include adult stepchildren that do not share a stepparent's home, or the in-laws of such stepchildren. SEC File No. SR-NYSE-2005-81 Amendment No. 2 (June 20, 2007).

²⁰ 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). 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.

²¹ 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

²² 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 issuer's financial statements as filed with the Commission (but not if the issuer reflects such entity solely as an investment in its financial statements). 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. Nasdaq IM-4200(a)(15). See *infra* note 27.

²³ For purposes of Rule 4350, 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.

²⁴ References to "executive officer" mean those officers covered by Exchange Act Rule 16a-1(f). Nasdaq IM-4350-4.

²⁵ 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.

²⁶ Nasdaq recently amended this provision to substitute "compensation" for "payments" and to make conforming changes in the wording of IM-4200 interpreting this provision. This amendment clarifies that payments for personal services or political contributions to a candidate will be considered disqualifying compensation. Nasdaq IM-4200(a)(15).

²⁷ 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 therefore 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. In addition, non-preferential payments by a listed company to a director or his or her family members made in the ordinary course of such companies' provision of business services will not pose a per se bar to a finding by the board that the director is independent as long as the payments are non-compensatory in nature and unlikely to taint a director's independence, such as interest payments related to banking services or loans by an issuer that is a financial institution or payment of claims on a policy by an issuer that is an insurance company. Nasdaq IM- 4200(a)(15).

²⁸ On November 3, 2004, the NYSE adopted a substantive change to the director-auditor relationship test in Section 303A.02(b)(iii) (SEC Release No. 34-50625; File No. SR-NYSE-2004-41), which previously had not considered the role an immediate family member of a director played at an audit firm if the family member acted in a professional capacity for the firm. A number of companies had found directors precluded from independence under the prior test because of past personal or family member affiliations with an audit firm, even though the person had no involvement with the firm's audit practice. The revised standard narrowed the disqualifying relationships to those now specified.

²⁹ Specifically, Section 303A.02(b)(iv) specifically provides that a director is not independent if "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 serve or served on that company's compensation committee." The NYSE has confirmed that this standard is to be applied 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 during the three-year period if during that period a director served as an executive officer of the company on which the listed company's executive officer served on the compensation committee.

³⁰ This standard bars not only a simultaneous compensation committee interlock but also, more broadly, any situation where a current executive officer of the listed company served during the past three years as a member of the compensation committee of a company of which a director or family member of the director served as an executive officer during such three-year period.

³¹ 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.

³² Contributions to any tax-exempt organization are not considered “payments” for purposes of this independence test. The listed company must disclose in its annual proxy statement (or, if the company does not file a proxy statement, in the company’s annual report) any such contributions from the company to a tax-exempt organization that one of their directors is an executive officer of, if, within the previous three years, contributions in any single fiscal year exceeded the greater of 2% of such charity’s consolidated gross revenues or \$1 million. Commentary to NYSE Listed Company Manual Section 303A.02(b)(v).

³³ 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 Marketplace Rule 4200(a)(15)(D). 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.

³⁴ 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-4200(a)(15).

³⁵ 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 2004 FAQs, Section 3.C.

³⁶ The NYSE has proposed eliminating this requirement to avoid duplication with amendments made by the SEC in August 2006 to Item 407 of Regulation S-K. SEC File No. SR-NYSE-2005-81 Amendment No. 2 (June 20, 2007).

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³⁹ 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, even though such subsidiary is itself a listed company, need not meet these audit committee independence requirements unless the subsidiary itself has a class of equity securities, other than non-convertible, non-participating preferred securities, so listed.

⁴⁰ 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).

⁴¹ 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).

⁴² Item 407 of Regulation S-K establishes disclosure requirements regarding director independence.

⁴³ Passive investment entities such as royalty trusts and securitization vehicles, qualifying as “asset-backed issuers” as defined in Item 1101 of SEC Regulation A-B, are excepted.

⁴⁴ 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 NYSE. A 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.

⁴⁵ 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 and publicly by press release. 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, in the event of a vacancy the company shall have a minimum of 180 days to regain compliance. 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.

⁴⁶ 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-4200(a)(15). *See supra* notes 16, 21 and 27.

⁴⁷ 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. Nasdaq Marketplace Rule 4350(d)(B).

⁴⁸ NYSE listing standards suggest that the audit committee or a comparable body could be considered as the forum for review and oversight of potential conflicts of interest situations. NYSE Listed Company Manual Section 307.00. *See* discussion *infra* on "Codes of Conduct and Ethics" regarding requirements of SOXA and the NYSE listing standards regarding conflict of interest matters in codes of conduct and ethics.

⁴⁹ For this purpose, a related person transaction is one defined as such in Item 404 of Regulation S-K (as amended) or, in the case of a small business issuer, Item 404 of Regulation S-B (as amended) 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.

⁵⁰ The NYSE has proposed to eliminate this requirement since a duplicative requirement was adopted by the SEC as Item 407(d)(3)(i) of Regulation S-K. SEC File No. SR-NYSE-2005-81 Amendment No. 2 (June 20, 2007).

⁵¹ In addition, Nasdaq Marketplace Rule 4350(k), effective December 6, 2005, requires a listed company's independent auditor to be registered with the Public Company Accounting Oversight Board, thereby conforming such rule's previous requirement that a listed company's auditor have been the subject of a peer review requirement to the requirement of SOXA Section 102 that all auditors of public companies be registered with the PCAOB, which registration requirement went into effect in 2005 and under which registered public accounting firms are subject to peer review requirements established by the PCAOB.

⁵² *See* SEC Regulation 14A, Schedule 14A, Item 7(d)(2)(ii)(E).

⁵³ A company need not comply with this director nomination requirement if it is subject to a binding obligation that was in effect prior to November 4, 2003 that is inconsistent with the requirement.

⁵⁴ Commentary to NYSE Listed Company Manual Section 303A.04.

⁵⁵ The NYSE has proposed to eliminate this requirement since a duplicative requirement was adopted by the SEC as Item 407(e)(5) of Regulation S-K. SEC File No. SR-NYSE-2005-81 Amendment No. 2 (June 20, 2007).

⁵⁶ Discussions regarding CEO compensation with the board generally are not precluded, as it is not the intent to impair communication among board members.

⁵⁷ 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* Marketplace Rule 4350(i).

⁵⁸ 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.

⁵⁹ Commentary to NYSE Listed Company Manual Section 303A.05.

⁶⁰ 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.

⁶¹ 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.

⁶² The company must include on its website its Code of Business Conduct and Ethics and state in its annual meeting proxy statement (or, if the company does not file an annual meeting proxy statement, in the company's annual report) that its Code of Business Conduct and Ethics is available on the company's website and is available in print to any shareholder who requests it. The NYSE has proposed eliminating the requirement of annual meeting proxy statement (or annual report) disclosure of the availability of the Code of Business Conduct and Ethics on the company's website. SEC File No. SR-NYSE-2005-81 (Nov. 23, 2005).

⁶³ Nasdaq IM-4350-7.

⁶⁴ The NYSE has indicated that "prompt disclosure" would usually require disclosure within two to three business days of the board's determination. NYSE 2004 FAQs. However, the NYSE has proposed amending its listing standards to require that disclosure of any such waiver must be made within the four business days following the granting of such waiver (consistent with the subsequently adopted provisions of SEC Form 8-K, Item 5.05 applicable to waivers of the code of ethics that Section 406 of SOXA requires companies to make disclosure about) and that disclosure must be made by distributing a press release, providing website disclosure or by filing a current report on Form 8-K with the SEC. SEC File No. SR-NYSE-2005-81 Amendment No. 2 (June 20, 2007).

⁶⁵ The company must also state in its annual proxy statement (or, if the company does not file an annual proxy statement, in the company's annual report) that its Corporate Governance Guidelines are available on the company's website and are available in print to any shareholder who requests them.

⁶⁶ *See* <http://www.nyse.com>.

⁶⁷ *See* <http://www.finra.org/Industry/Education/index.htm>.

⁶⁸ Foreign private issuers must disclose significant differences in its corporate governance practices on its website and such disclosures must be in English. NYSE Listed Company Manual Sections 303A.11, 303A.14.

⁶⁹ The NYSE has proposed amending this disclosure requirement to mandate that foreign private issuers post on their websites disclosure regarding the significant differences between the corporate governance practices they follow and the requirements applicable to U.S. companies under the listing standards, rather than having the choice to disclose such differences either on their website or in the annual report, which could result in roughly a year's delay in disclosure of a new difference. SEC File No. SR-NYSE-2005-81 Amendment No. 2 (June 20, 2007). In

addition, the NYSE has proposed that non-U.S. companies that cease to be “foreign private issuers” (and, thus, under SEC rules must make the same periodic reports as U.S.-organized companies) will be provided a transition period to reach full compliance with the governance listing standards applicable to U.S.-organized companies that is comparable to the phase-in applicable to companies listing in connection with an initial public offering. SEC File No. SR-NYSE-2005-81 Amendment No. 2 (June 20, 2007).

⁷⁰ Specifically, the Commentary to Section 303A.12(a) states that the CEO’s certification of compliance, including any qualifications, and “any CEO/CFO certifications required to be filed with the SEC regarding the quality of the company’s public disclosure” must be disclosed in the company’s annual report to shareholders. The NYSE has clarified that the only CEO/CFO certification so required to be included in a listed company’s annual report to shareholders is that required by Section 302 of SOXA with respect to the company’s Form 10-K (containing the annual financial statements also required to be included in the annual report to shareholders). Section 303A.12(a) does not apply to certifications required under Section 906 of SOXA, Section 302 certifications of quarterly financial statements filed as exhibits to Form 10-Q, or the internal control report required of management by Section 404 of SOXA. NYSE 2004 FAQs. The NYSE has proposed to eliminate its requirement that these certifications be included in the annual report sent to shareholders, given that SOXA Section 302 certifications are now required by the SEC to be made publicly available and a Form 8-K is required to be filed with regard to any reported material non-compliance with listing standards as well as the SEC’s amended requirements relating to Form 8-K filings. Additionally, the NYSE now appends an indicator to the ticker symbol of an issuer that is non-compliant with its corporate governance standards. SEC File No. SR-NYSE-2005-81 Amendment No. 2 (June 20, 2007).

⁷¹ 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. Nasdaq Corporate Governance Frequently Asked Questions *available at* <http://www.nasdaq.com/about/FAQsCorpGov.stm>.

⁷² The NYSE has proposed to require a listed company’s CEO to notify it of *any* non-compliance with a listing standard known to an executive officer. SEC File No. SR-NYSE-2005-81 Amendment No. 2 (June 20, 2007)

⁷³ Section 303A.12(c) of the NYSE Listed Company Manual.

⁷⁴ A Domestic Company Section 303A Interim Written Affirmation must be filed upon the occurrence of one of the following events: a director who was deemed independent is no longer independent; a director who was not deemed independent is deemed independent; a director has been added or has left the company’s board; 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; the company is no longer or has become a controlled company for purposes of 303A of the NYSE Listed Company Manual, or the company no longer qualifies as a foreign private issuer. Section 303A.12(c) of the NYSE Listed Company Manual.