2009 Annual Meeting Handbook

A PRACTICAL GUIDE FOR DIRECTORS AND EXECUTIVES

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Joshua Ford Bonnie and Vincent Pagano, Jr. are partners and LeAnn S. Leutner is an associate at Simpson Thacher & Bartlett LLP. Special thanks are extended to Karen Hsu Kelley, an associate at Simpson Thacher, for her contributions to portions of this book. The authors also thank Adam B. Frankel, General Counsel of Evercore Partners Inc., for his insightful comments. The views expressed herein are solely those of the authors. This guidebook is intended solely as an educational introduction to, and not an exhaustive treatment or analysis of, the topics and matters addressed. It is not designed to provide, and does not constitute or include, legal, accounting, tax or professional advice on any matter and should not be relied upon for that purpose.

2009 ANNUAL MEETING HANDBOOK

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INTRODUCTION

This handbook provides an overview of some of the laws, regulations and listing standards governing the conduct of annual meetings and the disclosures that U.S. public companies must furnish to their shareholders in connection with annual meetings. This discussion of the annual meeting framework is not a substitute for a careful review of the specific regulatory requirements that apply to a particular company. The information in this handbook is current only as of December 20, 2008. For updates on the latest developments in securities law and compliance and access to many useful resources, visit SecuritiesConnect™ at www.bowne.com.

LEGAL FRAMEWORK GOVERNING THE ANNUAL MEETING

A number of laws and regulations govern both the legal requirement that an annual meeting of shareholders be held and the preparation of proxy materials. These include the law of the company's state of incorporation, Section 14 of the Securities Exchange Act of 1934, the rules and regulations promulgated by the Securities and Exchange Commission under the Exchange Act, the listing standards of the stock exchange on which the company's stock is traded and the company's organizational documents.

I. State Corporate Law

Under state corporate law, a company must hold an annual meeting of shareholders for the purpose of electing directors and transacting other appropriate business.[1] In addition to authorizing proxy voting and granting shareholders the right to inspect shareholder lists, state law also governs many of the procedural elements related to shareholder voting and meetings. For example, state law may dictate whether the meeting must be held within the state, whether the meeting may be conducted electronically, how the date and time of the annual meeting are to be set, how the record date is to be determined, how notice of meetings is to be provided to shareholders and what constitutes a quorum for the transaction of business.

1. State corporate laws, subject to a company's organizational documents, typically allow actions required or permitted to be taken at an annual meeting to be taken without a meeting upon the written consent of the shareholders. These provisions usually require that the written consent setting forth the action to be taken be signed by the holders of outstanding shares having at least the minimum number of votes required to take such action at a meeting at which all shares entitled to vote thereon were present and voted. If a matter is approved without a meeting by less than unanimous consent of the shareholders, these statutes typically mandate that notice of the action be provided to the shareholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for the meeting was the date on which the written consent was approved. Notwithstanding the default provisions of state corporate law, however, the organizational documents of public companies frequently limit or prohibit shareholders from acting by written consent.

The failure to hold an annual meeting on the date specified generally does not affect otherwise valid corporate acts or result in a dissolution of the company. If an annual meeting of shareholders is not held, however, state statutes typically require that a company's directors call a special meeting for the purpose of electing directors. A company's failure to hold an annual meeting may also trigger rights of other parties. For example, in Delaware, pursuant to Section 211(c) of the General Corporation Law of the State of Delaware, if no annual meeting for the election of directors has been held within 13 months after the last annual meeting or for a period of 30 days after the date designated for the annual meeting, the Court of Chancery may order a meeting upon the application of any shareholder or director.

II. Federal Securities Law

Section 14 of the Exchange Act and the regulations adopted by the SEC thereunder establish the legal framework for the solicitation of proxies. Pursuant to the authority granted to the SEC under Section 14 of the Exchange Act, the SEC has enacted a comprehensive set of rules and regulations, known as the "proxy rules," that regulate the types of information that must be provided or made available to shareholders prior to a shareholders' meeting and the process by which shareholder proxies are solicited.

The proxy rules set forth disclosure requirements for the proxy statement, the form of the proxy itself and the annual report made available to shareholders in connection with an annual meeting (or special meeting in lieu of an annual meeting) at which directors are to be elected. The proxy rules also impose filing requirements on companies and others engaged in proxy solicitation and regulate the distribution procedures by which shareholders receive proxy materials prior to meetings. Even where proxies are not to be solicited in connection with a shareholders' meeting or where action is to be taken by the written consent of shareholders, Regulation 14C of the proxy rules generally mandates that an information statement containing much of the same disclosure as a proxy statement be filed with the SEC and provided or made available to shareholders.

III. Stock Exchange Rules

Companies with securities listed on the national stock exchanges, such as the New York Stock Exchange (NYSE) or the NASDAQ Stock Market (NASDAQ), must abide by the applicable listing requirements of the relevant exchange. Each of the exchanges has requirements that listed companies hold meetings as well as other rules related to annual

meeting procedures and communications among companies, record stockholders and beneficial owners holding stock through intermediaries. In addition, exchanges such as the NYSE and NASDAQ have corporate governance requirements that, among other things, impose affirmative proxy statement disclosure obligations, such as the requirement that listed companies make specified disclosures regarding director independence and other corporate governance-related matters.

IV. Corporate Organizational Documents

Under state corporate law, a company is generally permitted to address certain annual meeting matters in its certificate or articles of incorporation and bylaws. Corporate organizational documents usually provide for a number of matters, such as the manner for determining the date, location and time of the meeting, the fixing of the record date for the determination of shareholders eligible to vote and receive notice and, if the company has more than one class of securities, the voting and other rights of the various classes of stock. Corporate organizational documents may also include super-majority voting requirements for certain matters submitted to the shareholders and "advance notice" provisions, which require that director nominations and shareholder proposal submissions be received by the company prior to a specified date in order to be eligible for consideration at the meeting.

Certain decisions by Delaware courts in 2008, including *Jana Master Fund, Ltd. v. CNet Networks, Inc.* and *Levitt Corp. v. Office Depot, Inc.,* have prompted companies to review the advance notice provisions of their organizational documents to ensure that they operate in the intended manner. Many companies have amended, or are in the process of amending, their advance notice bylaws in light of these decisions to ensure that they are clear that shareholders may bring board nominations or other business before a meeting only if such shareholders have given the company timely notice of the business to be transacted and that business is a proper subject for shareholder action.

In addition, and prompted in part by the attention received by the decision of the U.S. District Court for the Southern District of New York in *CSX Corp. v. The Children's Investment Fund (UK) LLP,* which was affirmed by the Second Circuit Court of Appeals, many companies are amending their advance notice bylaws or otherwise seeking to require that shareholder proponents disclose to the company not just their record or beneficial ownership of the company's securities but also any other arrangements they or their affiliates have entered into relating to the company's securities or otherwise permitting those persons to benefit

economically from changes in the value of the company's securities. These types of provisions have not yet been tested in the Delaware courts.

Any company that revises its advance notice bylaws should confirm that its proxy statement disclosure accurately reflects the new provisions and should note that bylaw amendments are generally required to be reported on Form 8-K within four business days after the date on which the change is adopted.

THE PROXY STATEMENT AND PROXY

I. Background

A proxy enables a shareholder who does not attend an annual or special meeting in person to authorize another person to act as the shareholder's agent in voting on proposals submitted to shareholders. Proxy representation thus allows shareholders to participate in the corporate decision-making process even if they are unable to be physically present at a meeting. Because most public companies have a large number of widely dispersed shareholders, the proxy solicitation process is the primary mechanism by which fundamental corporate actions requiring shareholder approval are considered and approved.

The right to proxy representation is governed by state corporate law and a company's organizational documents, essentially all of which now permit proxy voting for public companies. Nonetheless, perhaps because federal disclosure requirements are so comprehensive, state corporate law and provisions found in corporate organizational documents are generally silent on the matter of proxy disclosure and solicitation, although common law disclosure obligations may exist.

Regulation 14A ("Solicitation of Proxies") and Schedule 14A ("Information Required in Proxy Statement"), promulgated under the Exchange Act, set forth the SEC's requirements for the proxy solicitation process. As part of the SEC's integrated disclosure system, the proxy rules in turn reference various items found in other SEC regulations, particularly Regulation S-K.

II. Solicitations

The proxy rules apply to every solicitation of a proxy with respect to voting equity securities registered under Section 12 of the Exchange Act, even if such securities are not publicly traded. Entities whose securities are exempt from registration under Section 12 of the Exchange Act are generally exempt from the proxy rules, including certain savings and loan associations, agricultural and certain other cooperatives, insurance companies, banks and non-profit corporations. Pursuant to Rule 3a12-3

under the Exchange Act, foreign private issuers are similarly exempt from the proxy rules.

The application of the proxy rules depends upon what is considered a "proxy" and whether a "solicitation" exists under federal securities law. Rule 14a-1(f) of Regulation 14A defines the term "proxy" broadly to include any assignment of the power to vote or express consent or dissent with respect to any securities on behalf of the record owner of such securities. Rule 14a-1(l) similarly applies a broad definition to the term "solicitation," defining "solicitation" to include (1) any request for a proxy, (2) any request to execute or not execute, or to revoke, a proxy and (3) any communication furnished to shareholders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.

Although the courts and the SEC have broadly construed the terms "proxy" and "solicitation," in 1992 the SEC adopted amendments to the proxy rules to create a safe harbor exemption for certain solicitations and to exclude other actions from the definition of solicitation altogether. Rule 14a-1(l)(2) of Regulation 14A excludes from the definition of "solicitation" a communication by a shareholder who does not otherwise engage in a non-exempt proxy solicitation if the communication merely states how the shareholder intends to vote and the reasons for such vote, provided that the shareholder is not otherwise soliciting proxies and the communication is made publicly, or is directed to persons to whom the shareholder owes a fiduciary duty in connection with voting or is made in response to an unsolicited request for information.

Pursuant to Rule 14a-2(a)(6) of Regulation 14A, solicitations through newspaper advertisements that (1) inform shareholders of a source from which they may obtain proxy materials and (2) do no more than name the company, state the reason for the advertisement and identify the proposal(s) to be acted upon by shareholders are exempt from the proxy rules if the person making the subject solicitation complies with certain conditions and requirements. Rule 14a-2(b) of Regulation 14A also excludes certain solicitations by persons other than the company from all of the proxy rules other than the anti-fraud provisions of Rule 14a-9. For example, subject to certain conditions, the proxy rules are generally inapplicable to the following types of solicitations:

- solicitations by persons (other than the company and certain other persons specified in Rule 14a-2(b)(1)) not seeking the power to act as proxy for a shareholder and not furnishing or requesting a form of revocation, abstention, consent or authorization at any time during the solicitation;

- solicitations made (other than by the company) to not more than 10 persons; and
- the furnishing of proxy voting advice by financial advisors to persons with whom the financial advisor has a business relationship.

Rule 14a-10 of Regulation 14A prohibits the solicitation of any undated or post-dated proxies or any proxies that provide for a deemed effective date that is subsequent to the date on which the proxy is signed by the shareholder.

Pursuant to Rule 14a-12 of Regulation 14A, management and shareholders are able to communicate regarding matters to be submitted for consideration at a shareholders' meeting so long as no form of proxy is furnished to or requested from shareholders until a definitive proxy statement is delivered to shareholders. The rule provides that a written solicitation may be made prior to furnishing a proxy statement if such communication:

- identifies and provides other information about the participants in the solicitation;
- contains a prominent legend which, among other things, advises shareholders to read the proxy statement when it becomes available because it contains important information; and
- is filed with the SEC on the date it is first published, sent or given to shareholders.

III. Electronic Shareholder Fora

Rule 14a-2(b)(6) of Regulation 14A exempts certain electronic shareholder fora from some of the limitations on solicitations under Regulation 14A. Specifically, any solicitation in an electronic shareholder forum by or on behalf of any person who does not seek the power to act as a proxy for a shareholder and does not furnish or request a form of revocation, abstention, consent or authorization will be exempt as long as such solicitation occurs more than 60 days prior to the date announced by the company for the annual or special meeting. (If the company announces the meeting less than 60 days prior to the meeting date, the solicitation will not be exempt if it occurs more than two days after the company's announcement.)

In addition, Rule 14a-18(a) of Regulation 14A permits a company or a shareholder to operate an electronic shareholder forum without being subject to liability for any information or statements posted by another participant in that forum. The operator of the forum will still be required to comply with the federal securities laws, including the antifraud rules.

IV. When Preliminary Proxy Materials Must be Filed

If the subject matter of the annual meeting (or special meeting in lieu of the annual meeting) relates only to (1) the election of directors, (2) the election, approval or ratification of accountants, (3) shareholder proposals under Rule 14a-8 and/or (4) the adoption of, or amendments to, employee benefit plans, then no preliminary filing of proxy materials is required. Otherwise, Rule 14a-6(a) of Regulation 14A requires that a soliciting party must file preliminary proxy materials with the SEC at least 10 calendar days prior to the date on which the soliciting party intends to make definitive copies of such materials available to shareholders. Upon a showing of good cause, the SEC may authorize a shorter time period between the filing of preliminary proxy materials and the time definitive proxy materials are made available to shareholders. To facilitate the process by which the SEC staff reviews preliminary proxy materials and to ensure adequate time to address any issues that may arise as a result of this review, every effort should be made to file preliminary proxy materials (where such filing is required) significantly in advance of the 10-calendar-day deadline. The preliminary proxy materials should be clearly marked "preliminary copy" and should be accompanied by a statement of the date on which definitive copies of the proxy materials are intended to be released to shareholders.

As interpreted by the SEC staff, the exemption from the requirement to file proxy materials in preliminary form for solicitations relating only to the approval or ratification of a compensation plan or amendments noted above does not extend to the ratification or approval by shareholders of awards made pursuant to such plans. Furthermore, the exclusion from filing preliminary proxy materials does not apply if the company comments upon or refers to a "solicitation in opposition" in connection with the meeting in its proxy materials. A "solicitation in opposition" includes any solicitation opposing a proposal supported by the company and any solicitation supporting a proposal that the company does not expressly support, other than (in either case) a shareholder proposal pursuant to Rule 14a-8.

V. Securities and Exchange Commission Review

In their review of proxy materials, the primary concern of the SEC staff has been to ensure that proxy materials contain the requisite disclosures and explain the important corporate matters and issues in a manner that shareholders can easily understand. As a practical matter, the SEC staff must advise a company within 10 calendar days of the filing of the preliminary proxy materials whether it intends to review them. If a company does not receive oral or other notice of a problem from the SEC

staff within that 10-day period, the company is free to distribute the definitive version of the proxy materials to its shareholders. Because the SEC considers the date of filing as the first relevant date, the proxy materials may be made available to shareholders no earlier than the 11th day after the company files preliminary proxy materials with the SEC. If the SEC staff does elect to review the preliminary proxy materials, the review period may take several weeks. Furthermore, if the SEC staff's comments result in substantive changes being made to the preliminary proxy materials, the final changes would normally be submitted to the SEC staff for review prior to the provision of definitive copies of the revised proxy materials.

VI. Proxy Mechanics

As the SEC noted in the Briefing Paper summarizing its 2007 Roundtable on Proxy Voting Mechanics, approximately 85% of U.S. exchange-traded securities are held in street name by intermediaries, such as brokers and banks, on behalf of their clients. The intermediaries deposit most of these securities with The Depository Trust Company (DTC), which holds them in fungible bulk on behalf the intermediaries, each of whom has a pro rata interest in the aggregate number of shares held by DTC. Each investor, in turn, has a pro rata interest in the number of shares held by DTC in which that investor's intermediary has an interest. Accordingly, each such investor is a beneficial owner rather than a record owner, and it is not usually possible to trace the investor's interest in the stock of a company to particular shares of stock of which the record owner is Cede & Co., DTC's nominee. Under the continuous net settlement system, all trades involving securities held by DTC are reflected through electronic book entries at the end of each day.

When an investor opens a brokerage account with an intermediary, the investor specifies whether it wishes to be treated as an objecting beneficial owner (OBO) or a non-objecting beneficial owner (NOBO). Intermediaries are not permitted to provide companies with the names and addresses of OBOs. Because the identities of OBOs are confidential, issuers must communicate with them through intermediaries rather than directly.

According to the Briefing Paper on the SEC's Proxy Voting Mechanics Roundtable, broker-dealers have estimated that only 30%-40% of retail investors typically give voting instructions for their shares. Retail participation has been even lower for companies using the Notice Only option under the e-proxy rules. Absent voting instructions, brokers may only vote shares on routine matters. As a result, a broker non-vote generally occurs when the entity holding the shares in street name has not

received voting instructions from the beneficial owner and either chooses not to vote the shares on a routine matter or is not permitted to vote the shares on a non-routine matter. The NYSE has submitted a proposed rule to the SEC that would amend NYSE Rule 452 to classify uncontested director elections as non-routine matters, but the SEC had not acted on this proposal at the time this book went to press.

Abstentions and broker non-votes may usually be considered present for purposes of satisfying a quorum requirement. Abstentions have the effect of votes "against" a proposal requiring the affirmative vote of a specified percentage of the shares present and entitled to vote on the proposal. When a broker has not received voting instructions with respect to non-routine matters, the broker non-votes are usually not considered to be "entitled to vote" on the matter and, as a result, will not be included in the denominator where the voting standard is a specified percentage of the shares present and entitled to vote. In such a situation, where the denominator is a smaller number, there will be fewer "for" votes required to pass such a proposal. However, where a broker has not received voting instructions but is entitled to vote on the matter because it is a routine matter, the broker non-votes will be included in the denominator and, therefore, will have the effect of votes against a proposal requiring the affirmative vote of a specified percentage of the shares present and entitled to vote on the proposal. Because abstentions and broker non-votes are not votes cast, they have no effect on a proposal requiring the affirmative vote of a specified percentage of the votes cast on the proposal. Abstentions and broker non-votes have the effect of votes "against" a proposal requiring the affirmative vote of a specified percentage of the outstanding shares.

VII. Provision of Proxy Materials to Shareholders

Companies must make the proxy materials (and, in the case of an annual meeting at which directors are to be elected, an annual report) available to shareholders prior to the shareholders' meeting. These documents may be either mailed or provided electronically as described below. To begin this process, issuers send proxy cards to Cede & Co. reflecting its record ownership on the record date. Cede & Co. then issues an omnibus proxy to each DTC participant to transfer to that DTC participant DTC's voting rights in the shares held in that participant's DTC account on the record date. After a DTC participant receives an omnibus proxy from DTC, that DTC participant/intermediary has voting authority over the shares it has deposited with DTC as of the record date. The intermediary then sends voting instruction forms to the investors who beneficially own the shares. These investors can use the voting instruction forms to indicate to the intermediary how they wish the intermediary to

vote the shares the investors beneficially own. This can become complicated when intermediaries have lent stock that investors own through margin accounts to borrowers who expect to be able to vote the shares even though the investors who beneficially own the stock through the margin accounts may also expect to be able to vote those shares.

Companies generally contact institutional holders of record (e.g., brokers, dealers, banks and others holding shares in a "street" or "nominee" name) for lists of beneficial owners and the number of proxy materials needed to mail to such owners at least 20 business days prior to the record date for the shareholders' meeting in accordance with Rule 14a-13(a). Institutional holders of record must then distribute, or use a service provider such as Broadridge Financial Solutions (formerly known as ADP) to distribute, proxy materials to beneficial holders within five days of receipt of such documents from the company. Companies must allow sufficient time for this process, particularly if they intend to take advantage of the new "notice and access" delivery option described below. There may be state corporate law limitations, however, that preclude sending the proxy materials and annual reports too far in advance of the meeting. For example, Section 222 of the General Corporation Law of the State of Delaware requires that notice of a meeting generally may not be mailed to shareholders more than 60 days before the date of the meeting.

A. Electronic Delivery

Starting January 1, 2009, each company and other soliciting person filing a proxy statement must post its proxy materials on the Internet and mail a Notice of Internet Availability of Proxy Materials (a Notice) to shareholders to inform them that the proxy materials are available on a freely accessible Internet website. In addition to this mandatory component of the e-proxy rules, a soliciting person may continue to mail hard copies of its proxy materials (the Full Set Delivery option), take advantage of the voluntary component of the e-proxy rules by mailing only a Notice and posting its proxy materials on the Internet (the Notice Only option) or choose a combination of these options to deliver proxy materials to shareholders. For example, a company might elect to use Full Set Delivery only for those retail shareholders that have historically provided voting instructions for their shares and use Notice Only for all other shareholders. If a soliciting person follows the Full Set Delivery option, the soliciting person may either include a separate Notice along with its proxy materials or may integrate the information required by the Notice into its other proxy materials.

Under the Notice Only option, a soliciting person must post its proxy materials on an Internet website that is freely accessible to the pub-

lic and mail a Notice to shareholders at least 40 days prior to the meeting date to inform shareholders that the proxy materials are available on the designated website and that shareholders may request paper or e-mail copies of the proxy materials. The website on which the soliciting person posts its proxy materials must be freely accessible and must comply with the privacy specifications set forth below.

Soliciting persons adopting the Full Set Delivery option are not required to mail their proxy materials to shareholders at least 40 days prior to the meeting. The additional lead time before the meeting is not necessary because shareholders will be receiving hard copies of proxy materials and, consequently, will not need time to request that soliciting persons mail such materials to them.

The Notice must feature the following prominent legend in boldface type:

Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting to be Held on [insert meeting date].

1. **This communication presents only an overview of the more complete proxy materials that are available to you on the Internet. We encourage you to access and review all of the important information contained in the proxy materials before voting.**
2. **The [proxy statement][information statement][annual report to security holders][is/are] available at [Insert Web site address].**
3. **If you want to receive a paper or e-mail copy of these documents, you must request one. There is no charge to you for requesting a copy. Please make your request for a copy as instructed below on or before [Insert a date] to facilitate timely delivery.**

The Notice must also provide:

(1) the date, time and location of the shareholder meeting;

(2) a clear and impartial description of the matters to be considered at the meeting and the company's recommendations, without supporting statements, on these matters;

(3) a list of the proxy materials available on the specified Internet website;

(4) a toll-free telephone number, an e-mail address and an Internet website where a shareholder can request paper or e-mail copies of proxy materials;

(5) instructions on how to electronically access the form of proxy (including any required control or identification numbers), provided that the shareholder is not able to execute a proxy without having access to the proxy materials (i.e., the initial Notice may not provide the option to vote by telephone, but the Internet website may provide this option); and

(6) information about how to obtain directions for attending the meeting and voting in person.

Pursuant to Rule 14a-16(n)(4), soliciting persons adopting the Full Set Delivery option may omit paragraphs 1 and 3 of the prescribed text of the Notice and are not required to include instructions indicating how to request a paper or e-mail copy of the proxy materials or how to electronically access the form of proxy.

The Notice must be in plain English (short sentences, everyday words, active voice, tables and bullet points when possible, no legal jargon and no multiple negatives) and may include logos and other graphics as long as the design is not misleading and the required information is clear. Other than the information listed above, the Notice may contain only (1) information required by state law if the Notice is being combined with a state law notice and (2) a statement advising that, in order to execute a proxy, stockholders will not be required to provide any personal information other than the control or identification numbers provided in the Notice. The only document that may accompany the Notice in addition to a state law notice is a pre-addressed postage-paid envelope for requesting a copy of the proxy materials. The Notice must be filed with the SEC as additional soliciting material no later than the date the soliciting person (or a service provider such as Broadridge, on behalf of the soliciting person) mails it to shareholders. Both the proxy materials and the option to vote must be available when the Notice is mailed. Although the initial Notice may not be accompanied by a proxy card, the soliciting person may send a paper proxy card along with another copy of the Notice at least 10 days after mailing the initial copy of the Notice.

The e-proxy rules require that the proxy materials must be available on a free, publicly accessible website. This may be either the soliciting person's website or that of a third party but may not be a link to the SEC's EDGAR website. The e-proxy rules contain several privacy specifications about the website that hosts the proxy materials. The website may not feature cookies and may not track the identity of anyone accessing the website to view the proxy materials. Because of these privacy concerns, many soliciting persons set up separate websites or use third-party websites to host proxy materials. The proxy materials on the website must

be in a format easily accessible for reading online or printing on paper. Proxy materials must remain posted on the website until the conclusion of the meeting. Within three business days after a shareholder request, the soliciting person or intermediary must send paper or e-mail copies of the proxy materials to the shareholder and must honor such requests for one year after the meeting date. Shareholders may make permanent requests for paper or e-mail delivery of proxy materials.

Brokers, banks and other intermediaries must comply with the e-proxy rules in preparing and sending their own Notices designed for beneficial owners. Because, under the Notice Only option, intermediaries must send the Notice to shareholders at least 40 days prior to the meeting, a soliciting person using the Notice Only option must provide a Notice to intermediaries sufficiently in advance so that they can send beneficial owners their own Notices related to voting instruction forms at least 40 days prior to the meeting date. The amount of time by which proxy materials will need to be completed in advance of the 40-day deadline will vary by intermediary but may be approximately six business days.

If a soliciting person uses the Full Set Delivery option, there is no requirement for intermediaries to mail Notices or proxy materials to beneficial owners at least 40 days prior to the meeting. As was the case prior to adoption of the e-proxy rules, intermediaries must forward proxy materials to beneficial owners within five business days after receiving them. Intermediaries must also include their own Notices along with the proxy materials they forward to beneficial owners.

A soliciting person other than the company must comply with the e-proxy rules in substantially the same manner as the company with a few important differences. First, a Notice must be sent to shareholders by the later of 40 days prior to the meeting date or 10 days after the company files its proxy materials. Second, a soliciting person other than the company may select specific shareholders it wishes to solicit (while the company must furnish each shareholder a proxy). Third, a soliciting person other than the company must include in the Notice a statement that there may be additional items the soliciting person is unaware of and that the proxy card provided by the soliciting party cannot be used to vote on those items. Further, if the proxy card does not include all agenda items to be voted on at the meeting, the Notice must include a statement indicating whether executing it would invalidate a proxy card previously executed by the shareholder that included the matters not included on the soliciting person's proxy card.

A company following the Full Set Delivery option may continue to send shareholders proxy materials via e-mail as long as the company

adheres to the relevant SEC guidance. Such guidance, among other things, requires that the shareholder must have previously consented or have been deemed to consent to electronic delivery and that such consent or deemed consent must remain valid. In addition, companies that sponsor employee benefit plans should note that the Notice Only option may not be consistent with certain Department of Labor rules regarding electronic delivery of plan materials to plan participants and with the trust or recordkeeping agreement between the company and the plan provider.

The Notice Only option may yield substantial printing and postage savings and may also be promoted as a green/environmentally friendly step by the company, although shareholders may still request that printed proxy materials be mailed under the Notice Only option. However, many companies adopting the Notice Only option have experienced a decrease in retail shareholder voting participation. Accordingly, companies or soliciting persons that want to maximize shareholder participation may wish to use the Full Set Delivery option, at least for certain categories of their shareholders. Factors that may affect the impact of the Notice Only option on shareholder voting participation may include the company's proportion of retail vs. institutional shareholders and their past voting patterns; the technical sophistication of the company's shareholder base; the likely reaction of retail shareholders to the Notice Only option; the nature of the items to be voted on at the meeting and whether the governance firms have issued recommendations against the company; and how much outreach (such as reminder mailings) the company is prepared to do to encourage participation under the Notice Only option.

For the 2009 proxy season, all companies and other soliciting persons will be required to post their proxy materials on the Internet and will be able to choose the Full Set Delivery option, the Notice Only option or a combination of those delivery methods. In summary, the Notice Only option affords substantial potential cost savings and other benefits, but following it may require significant acceleration of a company's timetable for preparing proxy materials due to the requirement that the Notice be mailed at least 40 days prior to the meeting date. Accordingly, careful advance planning and coordination with intermediaries and service providers is especially important for soliciting persons using the Notice Only option.

Under Section 232 of the General Corporation Law of the State of Delaware, notice may be given to a shareholder by a form of electronic transmission (such as facsimile transmission or electronic mail) to which the shareholder consents. Such consent may be revoked by the shareholder giving written notice to the company. Such consent will also be deemed to be revoked if the company's electronic delivery system fails for

two consecutive notices and the person responsible for giving the notices is aware of the failures.

B. Householding

Under Rule 14a-3(e) of Regulation 14A, the company, or the intermediary delivering the proxy materials and annual reports on its behalf, may deliver a single document set to multiple shareholders located at a single address. This process is known as "householding." The following conditions must be satisfied for a company to "household":

- the document set must be delivered to the shared address;
- the documents must be addressed to the shareholders individually, as a group, or as otherwise consented;
- the shareholders must either affirmatively or impliedly consent to delivery of a single document as described under the rule;
- if the document is a proxy statement, the company must deliver an individual proxy card for each shareholder sharing an address; and
- the company must include an undertaking to deliver promptly upon request a separate copy of the annual report or proxy statement to the shared address to which a single copy was delivered.

State corporate law may also regulate "householding." For example, under Section 233 of the General Corporation Law of the State of Delaware, a written notice of the meeting may be delivered to multiple shareholders at one address if consent is obtained. Such consent, which can be implied if the shareholder fails to object in writing within 60 days of having been given written notice by the company of its intent to send a single notice, can be revoked by written notice.

VIII. Filing of Proxy Materials

A. Securities and Exchange Commission

The SEC requires U.S. companies to file their definitive proxy materials electronically via the EDGAR (Electronic Data Gathering Analysis and Retrieval) filing system. Filings are generally made in either ASCII (American Standard Code for Information Interchange) or HTML (HyperText Markup Language) format with additional copies and some supplementary materials being allowed in PDF (Portable Document Format). There has been discussion that in the future the SEC may require the tabular compensation-related data included within the proxy statement to be "tagged" and reported in XBRL (eXtensible Business Reporting Language). On December 17, 2008, the SEC adopted a rule that will require companies with over $5 billion in worldwide market

capitalization to use XBRL for certain financial information included in their quarterly or annual reports for fiscal periods ending on or after June 15, 2009. The requirement expands to cover additional companies for fiscal periods ending on or after each of June 15, 2010 and June 15, 2011 but does not currently extend to proxy statements. For information regarding the filing of preliminary proxy statements, see the discussions above in Section IV. – "When Preliminary Proxy Materials Must be Filed" and Section V. – "Securities and Exchange Commission Review." To download EDGAR in a Nutshell, the EDGAR Filer Manual or numerous other resources, including information about XBRL, visit SecuritiesConnect™ at www.bowne.com.

B. Stock Exchanges

The NYSE currently requests six paper copies of proxy materials (including the proxy card), regardless of whether the materials have been filed on EDGAR. Such materials should be sent to New York Stock Exchange, Securities Operations Department, 20 Broad Street, 17th Floor, New York, NY 10005 no later than the date on which such materials are sent to shareholders. The NYSE also requires a preliminary review of proxy materials if any action is to be taken that affects the rights of listed securities or that would create new listed securities. NASDAQ allows electronic EDGAR filings to fulfill paper filing requirements. It may be advisable for a company to file preliminary proxy materials with the NASDAQ in certain instances, such as if the company intends to take action that would affect the voting rights of its outstanding securities.

IX. The Proxy Statement

Rule 14a-3 of Regulation 14A generally requires that each shareholder receive a proxy statement in connection with any solicitation by the company of the shareholder's proxy. Schedule 14A details the information that must be included in that statement. Rule 14a-5 sets forth requirements as to how information in the proxy statement is to be presented. A Sample Director and Officer Questionnaire, which may be useful in collecting some of the information that must be disclosed in the proxy statement, is attached as Appendix A to this handbook. A company wishing to incorporate information from its proxy statement by reference into its Form 10-K filing should note that Part III of Form 10-K includes two items, Item 406 of Regulation S-K (relating to codes of ethics) and Item 407(c)(3) of Regulation S-K (relating to material changes to the procedures by which shareholders may recommend nominees to the company's board of directors), that Schedule 14A does not require to be included in proxy statements.

A. Notice of the Meeting

Under state corporate law, a company must give written notice of its annual meeting to all shareholders within a fixed time period before the annual meeting. For example, Section 222(b) of the General Corporation Law of the State of Delaware requires that, unless otherwise provided in the General Corporation Law (for example, a longer notice period may be required if certain extraordinary items, such as a merger, are to be acted upon at the meeting), "the written notice of any meeting shall be given not less than 10 nor more than 60 days before the date of the meeting to each shareholder entitled to vote at such meeting." The same dates apply in regard to fixing the "record date," which is the date upon which share ownership is assessed to determine who is entitled to vote at the meeting of shareholders.

A company's organizational documents should be reviewed in setting the record date and preparing the notice of the annual meeting. The organizational documents may contain notice and record date provisions more restrictive than the requirements generally applicable under the relevant state law. Applicable stock exchange listing rules should also be consulted because they often require notice to the exchange of the record date and the annual meeting date. For example, Section 401.02 of the NYSE Listed Company Manual requires that a listed company provide notice to the NYSE upon establishment of its meeting date and generally at least 10 days prior to the date it sets as the record date for the meeting. The NYSE does not require a specified interval between the record date and the meeting date but recommends that a minimum of 30 days be allowed to provide ample time for the solicitation of proxies.

The notice of the meeting usually constitutes the first page of the proxy statement. Alternatively, the notice may be sent to shareholders in the form of a separate letter accompanying the proxy statement. Companies using the Notice Only option for making their proxy materials available to their shareholders should ensure that the notice that is mailed also satisfies all requisite state law notice requirements. The notice typically contains the time, date, place and purpose of the meeting, the company's complete mailing address and a statement regarding who is eligible to vote. Some states permit companies to deliver a single notice to numerous shareholders that reside at the same address if certain requirements are met. As discussed above, distribution of a single set of proxy materials to a household must also comply with the "householding" provisions of Rule 14a-3(e) of Regulation 14A and Item 23 of Schedule 14A.

B. Voting Information

Item 21 of Schedule 14A requires the proxy statement to state, for each matter to be submitted to a vote, the vote required for approval or election other than for the approval of auditors and to state the method by which the votes will be counted, including the treatment and effect of abstentions and broker non-votes under the company's organizational documents and the applicable state corporate law. As previously discussed under the caption "Proxy Mechanics," under current NYSE Rule 452 and NYSE Listed Company Manual Section 402.08, a broker that is a member of the NYSE and that is the record owner of shares held in street name on behalf of a beneficial owner may vote on "routine" issues, such as the uncontested election of directors, if the beneficial owner of the shares has not provided voting instructions at least 10 days before a meeting. The current NYSE rules specify 18 "non-routine" matters upon which brokers cannot cast a vote without instructions from the beneficial owner. Shareholder proposals are considered to be non-routine. The NYSE Weekly Bulletin lists pending shareholder meetings and indicates whether each proposal is routine or non-routine to provide clarity about whether discretionary broker voting will be allowed for each proposal.

C. Information about Directors, Director Nominees, and Executive Officers

If directors are to be elected at an annual meeting, a variety of information about the company's directors, executive officers and persons nominated to those positions must be disclosed in the proxy statement, in tabular form (if practicable), under Item 7(b) of Schedule 14A and Item 401 of Regulation S-K.

Item 401 of Regulation S-K requires disclosure of:

- the names and ages of all directors of the company and all persons nominated or chosen to become directors;
- all positions and offices with the company held by each such director or director nominee and the term of office and the periods the person served in that position;
- any arrangement or understanding between the director or director nominee and any other person (naming such person) pursuant to which he or she was or is to be selected as a director or nominee;
- the nature of any family relationship between any director, executive officer, or person nominated or chosen by the company to become a director or executive officer;

- a brief description of the business experience during the past five years of each director, executive officer, person nominated or chosen to become director or executive officer, including each person's principal occupations and employment during the past five years;
- any other directorships of public companies held by each director or person nominated or chosen by the company to become a director; and
- a description of certain legal or regulatory proceedings during the past five years involving any director, person nominated to become a director or executive officer of the company.

D. Compensation Discussion and Analysis

Item 402 of Regulation S-K mandates extensive disclosure regarding executive and director compensation. The required disclosures must be in plain English, and the rules are "principles-based" in that they identify the key objectives of good reporting in the subject area and then provide guidance to explain the objective and apply it to some illustrative examples.

The Compensation Discussion and Analysis section (CD&A) is one of the most important elements of executive compensation disclosure. The CD&A must discuss the most significant factors that underlie each company's compensation policies and decisions. The CD&A is required to include an explanation of all material elements of compensation of the named executive officers, addressing six general topics:

- a discussion of the objectives of the company's compensation programs;
- what each program is designed to reward;
- each element of compensation;
- why the company chooses to pay each element;
- how the amount of each element is determined; and
- how such elements fit into the company's overall objectives and affect decisions regarding other elements.

The purpose of the CD&A is to provide a thorough and specific presentation of the objectives of a company's compensation practices, including post-termination compensation arrangements. A properly drafted analysis should present the factors that go into deciding the types and amounts of compensation that the company awards.

As a guide, the SEC has given 15 examples of topics that a company might wish to address in its CD&A if appropriate based on the company's

particular facts and circumstances. Examples include the policy for allocating between cash and non-cash compensation and what specific items of corporate performance the company takes into account in setting compensation policies and making compensation decisions.

A company is not required to disclose certain types of compensation-related information if disclosure would result in competitive harm to the company. Examples include confidential business information and target levels with respect to quantitative or qualitative performance-related factors considered by the board of directors or the compensation committee. The standard for determining whether disclosure will cause competitive harm, however, is the same as for confidential treatment requests, and the SEC has indicated that this standard will be narrowly construed. In addition, a company omitting information in reliance on this exemption will be required to discuss how difficult or likely it will be for the executive or the company to meet the omitted performance targets.

The CD&A is considered to be filed with, rather than furnished to, the SEC. As a result, it is subject to the liabilities of Regulation 14A and Section 18 of the Exchange Act. The CD&A is therefore included within the material included or incorporated by reference in the Annual Report on Form 10-K that is certified by a company's principal executive officer and principal financial officer.

The proxy statement must also include a compensation committee report in which the compensation committee indicates whether it has reviewed and discussed the CD&A with management and whether, based upon that review and discussion, it has recommended to the board of directors that the CD&A be included in the company's Form 10-K and proxy statement. The compensation committee report is considered to be furnished to, rather than filed with, the SEC.

The SEC has emphasized the need for companies to focus on the analysis portion of the CD&A and clearly explain how and why the company made compensation decisions and how these decisions fit together in the context of the company's entire compensation program. Companies may wish to consider using executive summaries, graphics, charts and bullet points to make their compensation narratives more easily understandable and to focus on disclosure items such as performance target levels, the reasons other companies are included in peer groups for benchmarking purposes and the rationale for awarding different benefits to named executive officers upon a termination of the officer's employment or a change of control of the company.

Financial institutions participating in the Capital Purchase Program under the Troubled Asset Relief Program (TARP), which was established

by the Emergency Economic Stabilization Act of 2008 (EESA), are subject to certain executive compensation restrictions under Section 111 of EESA. Companies may need to modify their existing executive compensation arrangements to comply with the EESA restrictions.

All companies, including those not participating in the TARP, are likely to face increased scrutiny of their compensation decisions in the 2009 proxy season. It is also possible that a requirement for an advisory shareholder vote on executive compensation ("say on pay") will be enacted on the federal level in 2009. Companies may wish to craft their executive compensation disclosures with particular care in light of the current business environment and economic conditions.

E. Tabular and Narrative Executive Compensation Disclosure

In addition to the CD&A, the rules provide for tabular disclosure and require detailed narrative disclosure to explain the information in the tables. Item 8 of Schedule 14A and Item 402(a)(3) of Regulation S-K require compensation disclosure for "named executive officers," who are defined as:

- any individual who served as the company's principal executive officer or principal financial officer during the last completed fiscal year;
- the three most highly compensated executives who were serving as executive officers at the end of the fiscal year other than the principal executive and principal financial officers; and
- up to two additional individuals who were executive officers during part of the fiscal year and who would have been the subject of required disclosure but for the fact that they were not executive officers at the end of the fiscal year.

The rules require the determination of who is most highly compensated to be based on each executive's total compensation (excluding increases in pension value and earnings on deferred compensation) for the past fiscal year rather than being based solely on salary and bonus as under the previous rules.

The tabular compensation disclosure is organized into three categories of tables and related narrative disclosure:

- the Summary Compensation Table, which presents compensation information for named executive officers for the last three completed fiscal years and includes, as a final column, total annual compensation, in dollars, for each named executive officer;

- tables and narrative disclosure regarding holdings of equity-based interests that relate to compensation or are potential sources of future gains and realization on these interests during the last completed fiscal year; and
- tables and narrative disclosure relating to retirement and other post-employment compensation, including benefits payable in the event of a change of control of the company.

F. Director Compensation Disclosure

Item 8 of Schedule 14A and Item 402(k) of Regulation S-K require the proxy statement for a meeting at which action is to be taken with respect to the election of directors to include a director compensation table and related narrative to disclose director compensation for the last fiscal year. Similar to the Summary Compensation Table for named executive officers, the Director Compensation Table must include a total compensation figure, including cash fees, stock award values, option values, non-stock incentive compensation and all other compensation, including perquisites, tax reimbursements, charitable award programs (including costs of payments pursuant to director legacy programs) and consulting fees. The value of perquisites provided to each director must be disclosed on the same basis as the disclosure that is required for named executive officers.

G. Beneficial Ownership Information

Item 6 of Schedule 14A and Item 403 of Regulation S-K require tabular disclosure of certain beneficial ownership information. In the Security Ownership of Certain Beneficial Owners table, the company must disclose beneficial ownership information for any shareholder known to the company to be the beneficial owner of more than 5% of a class of the company's voting securities. In the Security Ownership of Management table, the company must disclose beneficial ownership information for (1) directors, (2) director nominees, (3) named executive officers and (4) all directors and executive officers as a group. Item 403(b) of Regulation S-K also requires companies to include in the Security Ownership of Management table disclosure of beneficial ownership of directors' qualifying shares and to include a footnote to disclose the number of shares pledged as collateral for loans or other obligations by named executive officers, directors and director nominees. This requirement does not extend to significant shareholders other than the requirement of Item 403(c) of Regulation S-K to disclose pledges that may result in a change of control of the company.

H. Section 16 Reporting Compliance

Item 7(b) of Schedule 14A and Item 405 of Regulation S-K require that the company disclose in the proxy statement under the title "Section 16(a) Beneficial Ownership Reporting Compliance" the names of any directors, officers or beneficial owners of more than 10% a class of the company's equity securities registered under Section 12 of the Exchange Act who have been delinquent during the most recent fiscal year or prior fiscal years in filing their reports under Section 16(a) of the Exchange Act (i.e., Forms 3, 4 and 5). The company must disclose the identity of each person failing to make a report, the number of reports that were filed late, the number of untimely reported transactions and any known failure to file a required report. The cover page of Form 10-K includes a box that a company should check only if it is not disclosing delinquent filings in the 10-K report and does not expect to disclose delinquent filings in its proxy statement. An insider's failure to make particular Section 16 filings on a timely basis must only be disclosed once.

I. Corporate Governance Disclosure

Item 407 of Regulation S-K requires disclosure regarding director independence and related corporate governance matters. Item 7(c) of Schedule 14A and Item 407(a) of Regulation S-K require a company to disclose the directors who served at any time during the fiscal year and the director nominees that it has identified as independent (and committee members not identified as independent), using the definition of independence that it uses for determining compliance with the stock exchange listing standards applicable to the company. For each director or director nominee that the company has identified as independent, the company must include a description, by specific category or type, of any transactions, relationships or arrangements (other than related person transactions otherwise disclosed) that the board of directors considered in determining that the applicable independence standards were met.

Item 7(d) of Schedule 14A and Item 407(b) of Regulation S-K require a company to state the number of meetings of the board of directors held during the last fiscal year and to make certain disclosures about director attendance at such meetings, including a description of the company's policy regarding board members' attendance at annual meetings and a statement of the number of board members that attended the prior year's annual meeting. The company must also make certain disclosures regarding the functions performed by, number of meetings held by and the composition of its audit, nominating and compensation committees and must indicate whether current copies of its audit, nominating and compensation committee charters are available on the company's website and, if so,

must provide the website address. Pursuant to Instruction 2 to Item 407 of Regulation S-K, if a company's audit, nominating or compensation committee charter is not available on the company's website, the company must include a copy of the charter as an appendix to the company's proxy statement at least once every three fiscal years or in any fiscal year in which the charter is materially amended.

Item 7(d) of Schedule 14A and Item 407(c) of Regulation S-K require a company to make disclosures about its nominating committee and the director nomination process.

Item 7(d) of Schedule 14A and Item 407(d) of Regulation S-K require disclosures about the audit committee, including whether it contains an "audit committee financial expert," and require the audit committee to make a report discussing actions that the committee members have taken with respect to the company's financial statements and independent accountants. In 2008, the SEC amended Item 407 of Regulation S-K to conform the language of the audit committee report to reflect a new rule from the Public Company Accounting Oversight Board (PCAOB) related to communications with audit committees regarding independence, PCAOB Rule 3526. Prior to this change, the audit committee report referred to "Independence Standards Board No. 1 (Independence Standards Board No. 1, Independence Discussions with Audit Committees), as adopted by the Public Company Accounting Oversight Board in Rule 3600T." Under revised Rule 407, the audit committee report must reference "applicable requirements of the Public Company Accounting Oversight Board regarding the independent accountant's communications with the audit committee concerning independence." Companies may wish to consider making conforming changes to their audit committee charters.

Item 7(d) of Schedule 14A and Item 407(e) of Regulation S-K require a company to make compensation committee disclosures similar to those already required regarding the audit and nominating committees and require a company to disclose the following information about its policies and processes for making decisions regarding executive and director compensation:

- the scope of authority of the compensation committee (or persons performing equivalent functions);
- the extent to which the compensation committee (or persons performing equivalent functions) may delegate authority to other persons, specifying what authority may be so delegated and to whom;

- any role of executive officers in determining or recommending the amount or form of executive and director compensation; and
- any role of compensation consultants in determining or recommending the amount or form of executive and director compensation, identifying such consultants, stating whether such consultants are engaged directly by the compensation committee (or persons performing equivalent functions) or any other person, describing the nature and scope of the consultants' assignments and the material elements of the instructions or directions given to the consultants with respect to the performance of their duties under the engagement.[4]

Item 7(h) of Schedule 14A and Item 407(f) of Regulation S-K require a company to disclose whether the company's board of directors provides a process for shareholders to send communications to the board of directors. The company must also describe any such process.

J. Disclosure Related to Independent Auditors

Under Item 9 of Schedule 14A, if the company's proxy statement relates to a meeting at which directors are to be elected or the company's independent public accountant is to be elected, approved or ratified, the proxy statement must include the following information about the relationship between the company and its independent public accountant:

- the name of the principal accountant selected or being recommended to shareholders;
- the identity of the company's principal accountant for the previous fiscal year if it is different from the accountant recommended or selected this year or if no accountant was selected or recommended for the current year;
- whether a representative of the principal accountant will be attending the annual meeting and, if so, whether the representative will have a chance to make a statement and be available to respond to appropriate questions; and

4. The SEC's adopting release for the compensation disclosure rules states that: "[w]hile this item and the Compensation Discussion and Analysis both involve the determination of executive officer compensation, they have different focuses. Item 407(e) focuses on the company's corporate governance structure that is in place for considering and determining executive and director compensation – such as the scope of authority of the compensation committee and others in making these determinations, as well as the resources utilized by the committee. In contrast, the Compensation Discussion and Analysis focuses on material information about the compensation policies and objectives of the company and seeks to put the quantitative disclosure about named executive officer compensation into perspective."

- if the company's principal accountant at any time in the last two years is no longer acting in that capacity or if a new principal accountant has been hired, specified additional information relating to the facts and circumstances of the change in accountant must be disclosed.

The company must also disclose:

- Audit Fees – aggregate fees billed for each of the last two fiscal years for professional services rendered for the audit and review of the company's financial statements or services in connection with statutory or regulatory filings or engagements.
- Audit-Related Fees – aggregate fees billed in each of the last two fiscal years for assurance and related services that are reasonably related to the performance of the audit or review of the company's financial statements and that are not reported under the caption "Audit Fees." The company must also describe the nature of these services.
- Tax Fees – aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for tax compliance, tax advice and tax planning. The company must also describe the nature of these services.
- All Other Fees – aggregate fees billed for all other products and services provided by the principal accountant that are not otherwise disclosed. The company must also describe the nature of these services.

In addition, the company must describe its audit committee's pre-approval policies and procedures and the percentage of non-audit services that were approved by the audit committee without pre-approval pursuant to Rule 2-01(c)(7)(i)(C) of Regulation S-X.

K. Transactions with Related Persons

Item 7(b) of Schedule 14A and Item 404 of Regulation S-K require the proxy statement for an annual meeting at which action is to be taken with respect to the election of directors to disclose information regarding transactions between the company and specified categories of related persons. Disclosure is required for any transaction since the beginning of the company's last fiscal year or any currently proposed transaction in which (1) the company was or is to be a participant; (2) the amount involved exceeds $120,000 and (3) a related person had or will have a direct or indirect material interest. A "related person" is defined to include any individual who served as a director or executive officer at any time during the last fiscal year, director nominees and the "immediate family

members" of such directors, executive officers and director nominees. The definition of immediate family members includes step-parents, step-children and any person sharing the household of the related person other than tenants or employees. A related person also includes a person holding more than 5% of any class of the company's voting securities.

For each related person transaction as to which disclosure is required, the company must provide the following information, in addition to any other information regarding the transaction or the related person in the context of the transaction that would be material to investors:

- the related person's name and the basis on which the person is a related person of the company;
- the related person's interest in the transaction, including the person's position or relationship with, or ownership in, a firm, corporation or other entity that is a party to or has an interest in the transaction; and
- the approximate dollar value of the amount involved in the transaction and the amount as to which the related person has an interest.

The company must describe its policies and procedures for the review, approval or ratification of transactions with related persons and must also identify any reported related person transactions that did not require review, approval or ratification or with respect to which the company's policies and procedures for review, approval or ratification were not followed.

L. Shareholder Approval of Equity Compensation Plans

Item 10 of Schedule 14A requires specified disclosures if shareholder action is to be taken regarding any plan pursuant to which cash or non-cash compensation may be paid or distributed. NYSE and NASDAQ listing standards require shareholder approval of listed companies' equity compensation plans. With a few limited exceptions, shareholder approval is required for the adoption of all equity compensation plans, including stock option plans, as well as all repricings and material amendments to such plans.

Section 303A.08 of the NYSE Listed Company Manual requires shareholder approval of all equity compensation plans and material revisions to such plans. The definition of an "equity compensation plan" is "a plan or other arrangement that provides for the delivery of equity securities (either newly issued or treasury shares) of the listed company to any employee, director or other service provider as compensation for

services." There are limited exceptions for mergers and acquisitions, inducement awards for new employees, plans that pay all benefits in cash, plans intended to meet the requirements of Section 401(k) of the Internal Revenue Code, employee stock purchase plans intended to meet the requirements of Section 423 of the Internal Revenue Code and parallel excess plans, which are defined as pension plans within the meaning of the Employee Retirement Income Security Act of 1974 that work in conjunction with tax-qualified plans to provide benefits in excess of Internal Revenue Code limits.

If a NYSE-listed company relies on the exemption for an inducement award, it must promptly disclose in a press release the material terms of the award, including the recipient of the award and the number of shares involved. The rules provide that, even if equity compensation plans and plan amendments are not subject to shareholder approval, such plans and related amendments must still be approved by the compensation committee of the company's board of directors or by a majority of the company's independent directors.

NASDAQ Rule 4350(i) also requires listed companies to obtain shareholder approval of equity compensation plans (including stock option plans) and material plan amendments, subject to limited exceptions described in the rules. While NASDAQ rules do not require companies that rely on the inducement awards exception to issue a press release describing the terms of each award, NASDAQ has announced that it intends to consider imposing a disclosure requirement for companies that rely on exceptions to the shareholder approval requirements. NASDAQ rules also require that equity compensation plans not subject to shareholder approval be approved by the compensation committee of the company's board of directors or by a majority of the company's independent directors.

X. The Proxy

The proxy card lists the proposals to be voted on and the names of the nominees for the board and identifies and authorizes the person(s) who will act as proxies for the shareholder. The form of proxy must comply with Rule 14a-4 of Regulation 14A, which requires the form of proxy to identify in boldface type the person or entity on whose behalf the proxy is being solicited, to contain a blank space for shareholders to date the proxy, to identify clearly and impartially each matter to be acted upon and to provide a means by which the shareholder may approve, disapprove or abstain with respect to each matter separately by marking the appropriate box.

In addition to using traditional paper proxy cards, shareholders can transmit voting instructions by telephone or via the Internet. SEC staff interpretations require that, when companies offer shareholders the option of submitting their proxies via the Internet, the proxy statement must describe the Internet voting procedures and the validity under the applicable state law of proxies granted in such a manner. The prevalence of electronic voting over the Internet is increasing. These electronic forms of voting permit shareholders to vote more quickly and conveniently and provide companies with cost savings and earlier information as to how various proposals are faring in shareholder voting.

XI. Shareholder Proposals

A. Procedural Requirements

Rule 14a-8 of Regulation 14A provides a mechanism for a shareholder to include in a company's proxy materials a proposal to be voted on at an annual or special meeting of shareholders.[5] The rule provides that a company must include a shareholder proposal and the shareholder's supporting statement in its proxy materials as long as the shareholder meets specified eligibility criteria and procedural requirements and as long as the proposal does not fall within one of the rule's 13 substantive bases for exclusion.

The four basic eligibility and procedural requirements under Rule 14a-8 are:

- The proponent must meet the eligibility threshold of (i) being a record or beneficial owner of at least 1% or $2,000 in market value of the securities entitled to be voted at the meeting, (ii) having held these securities for at least one year and (iii) continuing to hold the securities through the date on which the meeting is held. The proponent must provide documentation to the company to demonstrate its eligibility to submit a proposal. If the proponent fails to hold the required number of securities through the date of the annual meeting, the company will be permitted to exclude all proposals submitted by the proponent for any meeting held in the next two calendar years.

5. It is also possible for a shareholder to make a proposal from the floor at a meeting, but many companies have "advance notice" provisions in their organizational documents that require a shareholder proponent to provide advance notice to the company if the shareholder wishes to present a proposal at the meeting. Rule 14a-5(e)(2) of Regulation 14A requires that a company disclose in its proxy statement the date after which notice to the company of a shareholder proposal submitted outside of the Rule 14a-8 process will be considered to be untimely.

- The proponent or a representative qualified under state law must actually present the proposal at the company's shareholder meeting. If this does not occur, the company will not be required to include in its proxy materials for any meeting held in the following two calendar years any proposals submitted by the proponent.
- The proposal must be received at the company's principal executive offices not less than 120 calendar days in advance of the date that the company's proxy statement was released in connection with the company's last annual meeting. A company will have disclosed this date in its proxy statement for the prior year. If the company did not hold an annual meeting in the previous year or if the date of the annual meeting was changed by more than 30 calendar days from the date of the previous year's annual meeting or if the proposal is to be presented at a special meeting, the company must receive the proposal within a reasonable time before it begins to print and mail its proxy materials.
- A proponent may submit only one proposal and supporting statement for inclusion in a company's proxy materials in a particular year. The proposal and supporting statement together may not exceed 500 words.

B. Substantive Grounds for Exclusion of a Shareholder Proposal

Even if a proposal meets the procedural requirements, it may still be excluded by the company if:

- the proposal is improper under state law;
- the implementation of the proposal would cause the company to violate any state, federal or foreign law to which it is subject;
- the proposal or the supporting statement is contrary to the proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;
- the proposal relates to the redress of a personal claim or grievance against the company or any other person or is designed to result in a personal benefit or to further a personal interest that is not shared by the shareholders at large;
- the proposal is not relevant because it (i) relates to operations which account for less than 5% of the company's total assets at the end of its most recent fiscal year and less than 5% of the company's net earnings and gross sales for the company's most recent fiscal year and (ii) is not otherwise significantly related to the company's business;

- the company would not have the power or authority to implement the proposal;
- the proposal deals with a matter relating to the company's ordinary business operations;
- the proposal relates to a nomination or election for membership on the company's board of directors or analogous governing body or to a procedure for such nomination or election;
- the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;
- the company has already substantially implemented the proposal;
- the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;
- the proposal deals with substantially the same subject matter as one or more other proposals previously included in the company's proxy materials within the preceding five calendar years; in this case, the company may exclude the proposal from its proxy materials for any meeting held within three calendar years of the last time it was included if the proposal received (i) less than 3% of the vote if proposed once within the preceding five calendar years; (ii) less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding five calendar years; or (iii) less than 10% of the vote on its last submission to shareholders if proposed three times or more previously within the preceding five calendar years; or
- the proposal relates to specific amounts of cash or stock dividends.

In Exchange Act Release No. 34-40018, the SEC stated that proposals that relate to ordinary business matters but that focus on "sufficiently significant social policy issues" will not be excludable under the ordinary business operations exclusion because such proposals transcend day-to-day business matters and raise policy issues that merit a shareholder vote.

C. Responses to Shareholder Proposals

Companies may wish to develop policies to address shareholder proposals, taking into consideration the dates by which procedural objections must be sent to a proponent and the dates by which a formal objection to the inclusion of a proposal must be sent to the SEC. A company may wish to designate in its proxy statement a specific individual at the company to whom shareholder proposals must be directed. This procedure will lessen the likelihood that a proposal will be sent to

someone at the company who does not take prompt action to meet the tight deadlines applicable to shareholder proposals. A company may also proactively develop a strategy for responding to certain types of shareholder proposals, such as proposals requiring directors to be elected by a majority vote rather than a plurality vote or proposals to give shareholders an advisory vote on executive compensation (sometimes referred to as "say on pay" proposals), should it receive them.

A company faced with a shareholder proposal should first determine whether the proposal complies with the Rule 14a-8 procedural rules, including the requirement that the proposal was received by the company not less than 120 days prior to the date that the company's proxy statement was released in connection with the company's previous annual meeting. If the proposal does not comply with the procedural rules, the company has 14 calendar days after the date on which the company receives the proposal to send a notice to the proposal's proponent identifying the procedural deficiencies and stating the timetable for the proponent's response. The proponent's response to the company's notification of deficiency must be postmarked or electronically transmitted no later than 14 calendar days after the proponent receives the company's notification.

If the proposal meets the Rule 14a-8 procedural requirements, the company should determine whether the proposal may be excluded under any of the 13 substantive bases for exclusion set forth in Rule 14a-8. The company should consider contacting the proposal's proponent to discuss the possibility of a negotiated resolution pursuant to which the company could take certain actions requested by the proponent and the proponent would withdraw the proposal.

If it is not possible to exclude the proposal on procedural grounds and the proponent refuses to withdraw the proposal, the company may attempt to exclude the proposal by filing a no-action request with the SEC within 80 calendar days before the company files its definitive proxy statement and form of proxy with the SEC. The company has the burden of proof to demonstrate to the SEC staff that it should be permitted to exclude the challenged proposal. If it decides to file a no-action letter request, the company must submit to the Office of Chief Counsel of the SEC's Division of Corporation Finance of (1) the company's arguments for excluding the proposal, including applicable precedents, (2) the proposal and the proponent's supporting statement, (3) any correspondence the company has exchanged with the proposal's proponent and (4) an opinion of local counsel if the company seeks to exclude a proposal on the basis of state or foreign law. The company may submit these materials by (1) mailing six paper copies of the materials to the Office of Chief

Counsel of the SEC's Division of Corporation Finance at 100 F Street, N.E., Washington, D.C. 20549 or (2) e-mailing the materials to the Office of Chief Counsel at shareholderproposals@sec.gov, an e-mail address that the SEC established in 2008. The company must send the proponent a copy of the complete no-action request it has submitted to the SEC, and the proponent will have an opportunity to provide the SEC with a rebuttal to the company's no-action request. If the proponent withdraws the proposal or if the company withdraws its objection to the proposal after the company has submitted a no-action request, the SEC should be informed as soon as possible so that it does not dedicate time and resources to considering the moot request. The SEC will then issue a no-action response indicating that the proposal was withdrawn and stating the reasons for the withdrawal. The SEC may respond to a no-action request by giving the proponent an opportunity to cure a deficiency in the proposal. If the proponent does not cure the deficiency in the time allotted by the SEC, often seven calendar days, the company is permitted to exclude the proposal.

If the company is unable to convince the SEC to issue a no-action letter permitting exclusion of the proposal, it must provide disclosure regarding the proposal in its proxy statement and include the proposal on its proxy card. In the proxy statement, the company must either include the name and address of and the number of voting securities held by the proponent or include a statement indicating that it will provide such information about the proponent upon request. The company will need to formulate management's response to the shareholder proposal, including a possible statement in opposition in the proxy statement. If the SEC's no-action response requires the proponent to modify its proposal or supporting statement, the company must provide the proponent with a copy of its opposition statement no later than five calendar days after it receives the revised proposal. If the SEC has not required revisions to the proponent's proposal, the company is required to send the proponent a copy of its opposition statement no later than 30 days before it files its definitive proxy statement and form of proxy with the SEC so that the proponent has an opportunity to object to statements it believes are false or misleading. A company's statement in opposition to a shareholder proposal is not subject to the 500-word limitation applicable to the proponent's proposal and supporting statement.

The company may also wish to prepare a strategy for convincing institutional investors not to support the shareholder proposal and for responding to questions regarding the proposal from the press or at the annual or special meeting. If the proponent or a representative is not present at the meeting, the company is not required to bring the

proposal up for a vote at the meeting but should consider the public relations impact of not considering the proposal at the meeting. The company should also determine what actions it will take if a majority of its shareholders vote in favor of the shareholder proposal.

D. Recent Developments

On November 7, 2008, the SEC released Staff Legal Bulletin 14D. This Bulletin (1) provides guidance about shareholder proposals that recommend, request or require a board of directors to unilaterally amend the company's certificate or articles of incorporation, (2) establishes shareholderproposals@sec.gov as an SEC e-mail address for receiving requests for Rule 14a-8 no-action letters and related correspondence, (3) confirms that a company must send a notice of defect to a shareholder proposal proponent if the company's records indicate that the proponent has not met the volume and length of share ownership requirements under Rule 14a-8(b) and (4) specifies the manner in which proponents and companies should send copies of correspondence related to Rule 14a-8 shareholder proposals to the SEC and to each other. The SEC has also established a page on its website, http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8-incoming.shtml that tracks incoming no-action requests that the SEC has received since October 1, 2008 and posts the SEC staff responses to them.

In 2007, the Delaware State Constitution was amended to allow the Delaware Supreme Court to hear and determine questions of law certified to it by the SEC. The *CA Inc. v. AFSCME* case in July 2008 was the first case in which the SEC took advantage of this provision to certify to the Delaware Supreme Court a Rule 14a-8 question involving inconsistent interpretations of Delaware law. In this case, the Delaware Supreme Court held that a shareholder-proposed bylaw that would have required the company to reimburse reasonable expenses that a shareholder incurred in connection with a successful short slate proxy contest was a proper subject for shareholder action but that the bylaw, if adopted as drafted, would violate Delaware state law because it would take away the board's power to discharge its fiduciary duties to determine whether reimbursement of expenses was warranted in a particular instance. In the 2009 proxy season, proponents may introduce revised shareholder reimbursement proposals designed to pass muster under Delaware state law by leaving room for boards to exercise their fiduciary duties.

Despite various proposed rules in recent years, the SEC has declined to adopt a proxy access rule that would allow shareholders to use the company's proxy statement to nominate their own director candidates in opposition to the company's slate. In 2007, the SEC amended Rule

14a-8(i)(8) to clarify that companies may exclude shareholder proposals, such as proxy access bylaw amendments, that relate to director nominations or elections. In November 2008, the Southern District of New York dismissed Professor Lucian Bebchuk's attempt to compel Electronic Arts, Inc. to include in its proxy statement his "qualified proposal" bylaw amendment shareholder proposal that would preclude the board of directors from seeking to exclude certain shareholder proposals that would otherwise be excludable under Rule 14a-8. This decision is currently on appeal to the Second Circuit Court of Appeals. The board of directors of a company adopting a bylaw amendment of the type Professor Bebchuk proposes would not have the discretion to exclude a proxy access bylaw proposal even though Rule 14a-8(i)(8), as amended in 2007, permits the exclusion of such proposals.

Other shareholder proposals that may be prevalent in the 2009 proxy season include "say on pay" proposals that would give shareholders an annual advisory vote on executive compensation, proposals that would give specified thresholds of shareholders the right to call a special meeting and proposals that would adopt majority voting rather than plurality voting for uncontested elections of directors (although many companies have already made this change).

THE ANNUAL REPORT TO SHAREHOLDERS

I. Preparing the Annual Report

Rule 14a-3(b) of Regulation 14A requires that every proxy statement relating to a meeting at which directors are to be elected must be accompanied or preceded by an annual report. The annual report must contain the information specified in Rule 14a-3, including consolidated, audited balance sheets as of the end of the two most recent fiscal years and audited statements of income and cash flows for each of the three most recent fiscal years for the company and its subsidiaries. The report must also contain additional information such as management's discussion and analysis of the company's financial condition and results of operations, a description of business, information about the company's industry segments, products and operations and information about the directors and officers indicating each person's principal occupation or employment, market information about the company's securities and an undertaking to provide free of charge upon request a copy of the company's Annual Report on Form 10-K. Although not required, many companies currently fulfill this requirement using their Annual Report on Form 10-K filed with the SEC, which may be sent in an attractive "wrapper" with additional corporate communications. The following items required to be included within the Rule 14a-3 annual report are not otherwise required to be included in the company's Annual Report on Form 10-K: the performance graph required pursuant to Item 201(e) of Regulation S-K; and, if applicable, the information required pursuant to Item 304(a) of Regulation S-K ("Changes in and Disagreements with Accountants on Accounting and Financial Disclosure"), as provided by Rule 14a-3(b)(4) of the Exchange Act. In addition, the listing requirements of the relevant exchange may mandate additional items, such as the annual certification language required pursuant to Section 303A.12(a) of the NYSE Listed Company Manual.

In connection with the 2006 revisions to the compensation disclosure rules, SEC began to require the performance graph to appear in the company's annual report to shareholders rather than in the proxy statement. The performance graph must be a line graph comparing the yearly percentage change in the cumulative total shareholder return on

the company's stock over a period of generally five years to (1) a broad equity market index and (2) a published industry index or an index of peer issuers. The performance graph will be considered to be furnished to, rather than filed with, the SEC.

II. Filing of Annual Report with the Securities and Exchange Commission

As long as the Annual Report on Form 10-K includes all of the information that must appear in the annual report as specified in Rule 14a-3(b), a company does not need to file a separate Rule 14a-3 annual report with the SEC. Rule 14a-3(c) requires that a company provide the SEC with seven copies of the company's Rule 14a-3 annual report to shareholders for informational purposes by the later of (1) the date the annual report is first sent or given to shareholders or (2) the date the company's preliminary proxy materials are first filed with the SEC (if filing of preliminary proxy materials is not required, the relevant date is the date that definitive proxy materials are first filed with the SEC). Although it is not required, a company may file its annual report via EDGAR.

Companies can elect to incorporate by reference into their Annual Report on Form 10-K some of the information that was presented in the annual report sent to shareholders in accordance with Rule 14a-3. Information that is incorporated into the 10-K, however, must be filed with the SEC and becomes subject to liability under Section 18 of the Exchange Act.

III. Distribution of Annual Report

An annual report must be made available to each shareholder either prior to or together with any proxy statement related to an annual meeting at which directors will be elected. As discussed above with respect to other proxy materials, companies may satisfy this requirement by sending each shareholder a Notice of Internet Availability of Proxy Materials in accordance with Rule 14a-16. Companies electing to physically deliver their proxy materials have typically sent the proxy statement, proxy card and annual report to shareholders together in one package. If, however, a company decides to send the documents in separate mailings, the materials must be sent in a method designed to ensure that the annual report reaches the shareholder first.

When a company is ready to finalize its proxy statement, annual report and Form 10-K, it should make sure that it is complying with the listing requirements of its stock exchange. The NYSE Listed Company Manual does not require listed companies to physically distribute annual

reports to shareholders. However, pursuant to Section 203.01 of the NYSE Listed Company Manual, a company that elects not to physically distribute an annual report containing audited financial statements is required to post its Annual Report on Form 10-K on its corporate website along with a prominent undertaking that the company will deliver a paper copy of the complete audited financial statements free of charge to any shareholder who requests it and must issue a press release stating that the Form 10-K has been filed with the SEC, specifying the company's website address where the Form 10-K is posted and indicating that shareholders may request a hard copy of the complete audited financial statements free of charge. The NYSE has advised that domestic companies subject to the SEC's proxy rules are not required to post the website undertaking or issue the press release described in Section 203.01 of the NYSE Listed Company Manual.

While NASDAQ requires each listed company to distribute an annual report to shareholders a reasonable period of time prior to the company's annual meeting and to file the annual report with NASDAQ at the time it is distributed to shareholders, NASDAQ permits a company to meet the annual report distribution requirement by posting the annual report on its website along with a prominent undertaking that the company will provide a paper copy of the annual report free of charge to any shareholder who requests it. A NASDAQ company that elects not to physically distribute an annual report must, simultaneously with posting the report on its website, issue a press release indicating that the annual report has been filed with the SEC, that the annual report is available on the company's website and that shareholders may receive hard copies of the annual report free of charge upon request.

PREPARING FOR THE ANNUAL MEETING

I. Planning the Annual Meeting

Planning a corporate annual meeting is a large undertaking that demands significant thought and effort to orchestrate successfully. It requires organizing corporate executives, legal staff, finance and public relations departments, outside legal counsel and auditors and other third parties that may include event staff, vendors, institutional shareholders of record, proxy solicitors and the press. Moreover, legal counsel should be consulted to ensure compliance with the company's organizational documents, state and federal laws and regulations and applicable exchange rules. Successful planning can be facilitated by early preparation of a timing and responsibility schedule that identifies the necessary pre-meeting tasks that must be completed and assigns responsibility so that nothing is overlooked. A Sample Annual Meeting Timetable is attached as Appendix B to this handbook.

II. Setting the Record and Annual Meeting Dates

A. Record Date

The "record date" is the date upon which the shareholders that are entitled receive notice of and to vote at the meeting are determined. A shareholder who purchases shares after the record date but before the meeting is not a "shareholder of record" for purposes of, and thus is not entitled to vote at, the meeting. Under Section 213(a) of the General Corporation Law of the State of Delaware, the board of directors of a Delaware corporation must set the record date by resolution not more than 60 but no less than 10 days before the meeting date. For a listed company, notice of the record date generally must also be given to the NYSE 10 days in advance of the record date. Fixing the record date as far as possible in advance of the meeting date will allow ample time to solicit proxies. Rule 14a-13 of Regulation 14A also requires that, at least 20 business days in advance of the record date, companies request from institutional holders the number of sets of proxy materials and other materials needed for delivery to beneficial owners.

B. Annual Meeting Date

Subject to applicable law, the annual meeting date is generally set by the board of directors unless otherwise provided for in the company's organizational documents. Under Delaware law, if the annual meeting of a Delaware corporation is not held within 13 months of the previous meeting, or within 30 days of the designated meeting date, shareholders are generally given the right to make an application to the Delaware Chancery Court to summarily order a meeting to be held. Where no extraordinary items, such as a merger, are to be acted upon, Delaware law generally requires that notice of a meeting of a Delaware corporation be sent to stockholders between 10 and 60 days in advance of the meeting. Courts may intervene if it can be shown that the meeting date was set or changed to advantage current management or disadvantage a dissenting shareholder. The annual meeting is typically held within a few months after the annual report and the audited financial statements for the prior year become available.

III. Preparing the Meeting Agenda, Script and Rules of Conduct

A well-planned agenda and rules of conduct will facilitate a successful annual meeting. A Sample Annual Meeting Agenda is attached as Appendix C to this handbook. A detailed script for speakers, including alternate scenarios and options for dealing with possible events not scheduled on the agenda is also helpful. The script should reflect the proper legal formalities, as well as procedures to determine whether a quorum is present, to approve matters to be presented for shareholder votes and to record those votes. A Sample Annual Meeting Script is attached as Appendix D to this handbook.

There is no prescribed format for meetings, but they must be conducted fairly. Rules of conduct should be clear, easy to follow and made available to shareholders at the beginning of the meeting. Robert's Rules of Order are not required, nor even recommended, because they may be needlessly cumbersome and complex. Simple rules encourage compliance by making it easier for attendees to both quickly read and understand what to expect. Some Sample Annual Meeting Rules of Conduct are attached as Appendix E to this handbook. Generally, rules of conduct should provide guidelines for an orderly meeting with enough flexibility that the chairperson may adapt to any unforeseen circumstances. Key rules limit speakers to those recognized by the chairperson and establish policies about the number of questions and speaking time allotted to meeting participants.

IV. Pre-Meeting Logistics

A. Location

Generally, the board of directors may choose the location of the meeting unless otherwise provided for in the company's organizational documents. The meeting may be held in the same place every year, or, as is common for companies with a large number of dispersed shareholders, may be rotated among large cities or where appropriate venues are available. Once a location is selected, it should be reserved as soon as possible to ensure availability. Large or popular venues are often reserved months or years in advance. Items to consider in regard to location may include:

- the ease of access to transportation and parking facilities;
- the general ability of shareholders to attend a meeting at that location;
- the seating capacity and size of the location;
- the availability of extra conference rooms and locations for any needed exhibits or reception areas;
- the presence of sound, lighting, Internet, video conferencing and other technical resources;
- sufficient restroom facilities;
- adequate ventilation, air conditioning and heating;
- the proximity to the company's headquarters and other important locations; and
- the absence of other problematic factors such as local anti-business sentiment, prior demonstrations, the possibility of local unrest and other large meetings or conventions preventing adequate access to transportation or lodging.

Both when seeking a venue and when considering the physical arrangements discussed below, organizers may wish to consider enlisting the help of professional event planning services.

B. Physical Arrangements

After the venue has been reserved, persons responsible for the physical arrangements of the meeting should become familiar with the venue, the operation of any equipment to be used during the meeting, scheduled services or other arrangements and the surrounding area. Other arrangements that should be addressed as far in advance as possible may include:

- setting up a press room (and possibly a separate registration desk for the press);
- signage for parking, conference rooms, the main meeting room and other locations;
- sign-in sheets for participants;
- seating, tables, name placards and other equipment arrangements as necessary for the attendees, including the directors, officers, legal counsel, accounting advisors and shareholders;
- the availability of an overflow capacity for unexpectedly large crowds;
- the availability and operation of audio, video, lighting, telecommunications and other equipment;
- microphones for shareholders;
- refreshments for participants;
- transportation and parking, lodging, nearby eating establishments and possible entertainment venues;
- having an ambulance on site in case of a medical emergency;
- briefing books for the chairperson and any speakers containing scripts, agendas and relevant corporate reports and filings;
- packets containing agendas, proxy statements, corporate reports and filings, promotional materials and any other items to be distributed to attendees;
- asking company employees to staff any reception areas or registration desks and to act as ushers (reception areas and registration desks are best placed away from the meeting so that any unforeseen disturbances can be intercepted and dealt with without interrupting the meeting); and
- badges to identify company representatives and security.

C. Attendance Rules

Clear rules for who may attend the meeting will prevent later confusion and disruptions. Shareholders and proxy holders are the only ones with a legally enforceable right to attend the meeting, although additional parties such as employees, the inspector of elections, legal, accounting and other advisors, members of the press and the company's transfer agent are often also invited to attend. After the list of parties who may attend is created, clear policies for attendance should be circulated in advance if any restrictions are planned – preferably with the company's proxy materials. Organizers should give special consideration to any restrictions on attendance based on lack of space, inability to provide

identification or late arrival and should additionally remind beneficial owners to obtain proof of ownership – such as a letter or proxy card – from the institutional holder of record.

Once attendance policies have been determined, organizers should consider methods of enforcement for those policies. Options include requiring those attending to present an admission ticket (which may be provided by the company to those returning a remittance card supplied with proxy materials), requiring picture identification or having a registration desk (possibly with an attorney present to deal with any unusual problems).

D. Security

Organizers should be sure to plan security to protect against disturbances both from outsiders and also from possibly overzealous attendees. Security considerations are especially important for large gatherings, if particularly contentious issues are likely to be discussed or for any companies with a high media profile that might attract outside attention. On the other hand, excessive or highly visible security measures both add to the cost of the event and may also create a negative impression among shareholders. Actions to take when organizing security may include:

- preparing and rehearsing detailed meeting scripts containing likely scenarios and suggestions on how to best deal with disruptions or preempt likely problems;
- assessing security options already in place or offered by the chosen venue;
- considering who will act as security personnel (e.g., off-duty police officers);
- requesting that specific individuals serving as security personnel or from the company's security or legal departments take responsibility for escorting disruptive attendees out of the meeting (consider whether to avoid placing company employees in the position of having to restore order to the meeting); and
- contacting local authorities to notify them of the upcoming meeting and any likely disturbances, as well as to facilitate coordination between them and any private security presence.

CONDUCTING THE ANNUAL MEETING

I. Voting Procedures

A. Quorum

A quorum must be present to properly transact business at the annual meeting. Under Delaware law, once a quorum is established, it cannot be broken by attendees leaving the meeting. In the case of a Delaware corporation, the number of shares present or represented by proxy necessary to establish a quorum may be set in the certificate of incorporation or bylaws of the corporation, but a quorum may not consist of number of shares present or represented by proxy representing less than one-third of the corporation's voting power. If a Delaware corporation's certificate of incorporation and bylaws are silent on the point, a majority of the shares entitled to vote, present in person or represented by proxy, constitutes a quorum. Note that, for these calculations, shares present but abstaining from votes or proxy holders lacking instruction on all matters presented are counted for purposes of establishing a quorum. Treasury shares and shares held by subsidiaries are generally not counted when establishing a quorum.

B. Required Vote

Generally, for a Delaware corporation, the affirmative vote of the majority of shares present and entitled to vote on the subject matter constitutes valid corporate action, except in certain matters such as the election of directors. Unless the company has adopted majority voting for director elections, only a plurality of shares present and entitled to vote is typically required to elect directors. Certain other matters such as mergers and charter amendments may require a majority of the outstanding shares or a supermajority vote for approval. The organizational documents of a company may require other voting arrangements, such as cumulative voting, depending on the action being considered. The stock exchanges also have certain voting requirements depending upon the proposed action. During voting, the chairperson should declare the time that voting will begin, give time warnings before voting closes and announce the time of the closing of the vote.

C. Electronic Proxy Voting

Applicable state law, the company's organizational documents and the rules of the company's stock exchange should be checked to determine whether electronic proxy voting is permitted. Section 212 of the General Corporation Law of the State of Delaware and the rules of the NYSE and NASDAQ generally allow electronic proxy voting. If permitted, technology and processes must be established that satisfy both state and federal proxy voting rules. Special attention should be paid to ensuring that votes are authentic and the process secure. Electronic proxy voting has the advantage of encouraging early submissions of proxies so that a company can gauge the effectiveness of its solicitation efforts and predict and plan in advance for likely outcomes. Moreover, once established, electronic proxy voting is generally less expensive than traditional voting.

II. Information Provided to Shareholders at the Annual Meeting

Delaware law requires that a Delaware corporation make available a list of shareholders and their addresses during, and 10 days prior to, the shareholder meeting. Federal law also requires that the list be made available upon request. However, beyond the required list, companies generally also make available to attendees copies of their annual shareholder report, the proxy statement and other materials and federal securities filings such as Form 10-K, as well as corporate marketing and promotional materials.

III. Shareholder Questions

Generally, a question and answer session will be held during the meeting. This session often follows a presentation by management regarding the company's affairs and undertakings during the prior year. Many companies elect to adjourn the official portion of the meeting before moving on to these more informal presentations to and interactions with shareholders. Companies should be aware that Regulation FD applies to shareholder meetings. Accordingly, unless the meeting is made available in an appropriately pre-notified webcast or conference call format, companies should refrain from disclosing material non-public information and should follow their Regulation FD compliance procedures if such information is inadvertently disclosed during the course of a meeting.

Although most questions are likely to be about matters being considered for action during the meeting, occasionally highly disruptive and aggressive questions will be presented, often on matters not on the

formal agenda. Those charged with responding to questions should be provided with adequate information regarding both agenda and non-agenda items that are likely to be the subject of questioning. Organizers may wish to consult with internal departments of the company – particularly finance and internal audit – to solicit likely questions and possible answers and poll outside auditors and legal counsel, as well as proxy solicitors, as to difficult questions they have heard at recent shareholder meetings.

The chairperson and anyone else who may answer questions should be aware that no amount of preparation will make them ready for some inevitably oddball questions. Such individuals should remember not to get flustered and to feel free to defer to others at the meeting or offer to answer the question at a later time if the shareholder provides contact information. The chairperson or a designated timekeeper should give time warnings to anyone asking questions in order to avoid people being cut off and to encourage concise comments.

IV. Meeting Disruptions

Scheduling an adequate security presence, preparing a detailed agenda and script with responses to likely questions and clear rules of conduct will help to manage or prevent most disruptions. Particularly determined questioning or grandstanding by attendees or other significant interruptions, however, may occur. Generally, if sufficient proxies have been pre-collected, any outbursts are unlikely to have an impact on voting. The chairperson should simply remind those interrupting that they are in breach of the rules of conduct and wait out the disruption or allow other shareholders to request that the meeting move on. The chairperson should make sure to give warnings and some leeway in order to avoid seeming heavy-handed. In extreme cases, the chairperson should attempt to have a disruptive party's microphone turned off or consult with an attorney as to whether having the relevant parties escorted from the meeting would be appropriate. Some practitioners suggest consulting local disorderly conduct statutes to cite in an attempt to dissuade particularly disorderly attendees.

Unexpected proposals may also be presented. Corporate organizational documents frequently contain "advance notice" provisions requiring that a shareholder must submit notice to the company a specified period of time prior to a meeting if the shareholder wishes to raise a matter from the floor at a shareholders' meeting. The meeting chairperson may rule that a proposal is out of order if the shareholder making the proposal has not complied with the applicable advance notice requirements. In such cases, the chairperson should explain that the

proposal is out of order and should be withdrawn and submitted before the following meeting. Unexpected proposals may also be excluded if they are inconsistent with the relevant law of the company's state of incorporation, such as if the proposal is illegal or if it addresses matters reserved for the board of directors. Valid proposals should be presented at the meeting for consideration by those eligible to vote, and proposals related to the running of the meeting itself should be submitted to all attending shareholders and proxy holders. Cautious boards should consider amending bylaws well in advance of the meeting to require early submission of proposals if they wish to limit or at least predict the content of shareholder proposals. When creating such restrictions, the board should be careful not to establish unreasonably early submission deadlines. For additional guidance on shareholder proposals made under Rule 14a-8 and grounds for their exclusion, see "Shareholder Proposals" above.

V. Adjournment

Section 222 of the General Corporation Law of the State of Delaware provides that when an already convened meeting of a Delaware corporation is adjourned to another time or place, unless otherwise required in the company's bylaws, notice does not need to be given of the adjourned meeting if the time, place, and any means of remote communications are announced at the original meeting. At the adjourned meeting, the company may transact any business which could have been transacted at the original meeting. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting must be given to record stockholders entitled to vote at the meeting. Temporary adjournments may give rise to a number of legal complications. If such an adjournment is under consideration, outside counsel should be contacted.

VI. Public Relations

Recent years have seen an increased interest by the press in shareholder activism, and organizers may need to plan for unexpected or greater than normal press attention. Organizers should contact their corporate public relations department to ensure that media outlets are notified of the annual meeting and provided with a press release discussing it if media coverage is desired. Public relations staff can attempt to gauge press interest when contacting the outlets so that organizers can predict likely interest. Prior to the meeting, organizers may wish to monitor any websites that might discuss the company and

consider signing up for any e-mail or other mailing lists that might discuss company activities. Recently, some activist shareholders have used websites to supplement proxy solicitations. Larger companies are often the subject of dedicated websites and e-mail lists that are critical of corporate actions.

During the meeting, attendees may be provided with contact information for any follow-up questions or to pose questions that could not be answered during the meeting. Additionally, companies may wish to collect a list of shareholder e-mail addresses for later use. It should be noted that current Delaware law does not require a Delaware corporation to provide shareholder e-mail addresses with the shareholder list of names and mailing addresses.

A post-meeting press release or bulletin can also be issued describing the meeting, voting results and meeting highlights. Companies may also make a recording of the meeting available to requesting shareholders or on its website. Careful consideration, however, should be given to the public relations and legal aspects of making possibly confidential or sensitive details available to the public.

VII. Electronic Annual Meetings

Unlike many other states, Section 211(a) of the General Corporation Law of the State of Delaware allows the board of directors of a Delaware corporation to choose "no location" when the organizational documents of the corporation place the authority to choose the location of the meeting within the board's discretion. In such a situation, the board may elect to hold the meeting by means of "remote communication" so long as the company implements reasonable measures to verify that participants present and permitted to vote are either shareholders or proxy holders; that such participants have a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with the proceedings; and that the company maintains records of voting and other actions taken by such shareholders or proxy holders. The organizational documents of the company and relevant exchange rules should also be consulted to ensure that electronic meetings are not otherwise prohibited.

The availability of electronic communications for meetings has a variety of benefits. First, electronic broadcasts may be used to allow remote shareholders or employees to participate in an otherwise traditional annual meeting. Organizers may want to consider various methods of allowing remote questioning and other participation. Second, a fully

electronic meeting can greatly reduce the corporate cost and management and director time spent on holding annual meetings by eliminating travel time and the need to reserve large venues. Moreover, as with electronic broadcasts used in conjunction with traditional meetings described above, a fully electronic meeting can be used to increase shareholder and employee access to and participation in the meeting.

However, as one can imagine, increased shareholder direct participation and lack of personal contact with management may have negative consequences, such as discouraging advance proxy voting which may result in less predictable outcomes and an inability to adjust solicitation methods, greater negative shareholder activism due to increased participation, the possibility of a decreased ability to manage the flow of the meeting and questioning in certain types of electronic mediums and a reduced ability to defuse or redirect hostile questioning through face-to-face persuasion.

VIII. Report on the Results of Voting

After the meeting, the corporate secretary or other authorized individual should draft minutes that detail the date, time and location of the meeting; record date; proxy materials distributed; the appointment of the inspector of election; when voting opened and closed; matters and candidates presented and voted upon (as well as the relevant motions and seconds); votes cast for, against and withheld for each proposal or director; abstentions and broker non-votes; relevant attendance numbers constituting quorum; the attendance of notable persons including officers, directors, legal and accounting advisors; and adjournment. Such minutes should be filed in the corporate records, along with other documents such as the notice of meeting and the affidavit of mailing, the report and oath of the inspector of elections, vote tallies and any transcripts.

Public companies are required to disclose the results of voting in the Quarterly Report on Form 10-Q covering the period of the meeting (or, in the case of a meeting held during the fourth quarter, in the Annual Report on Form 10-K). Additionally, as noted above, companies often issue post-meeting press releases or bulletins describing the results of their meetings. Care should be taken to ensure the accuracy of these disclosures. For example, in 2008, in response to a shareholder complaint, Yahoo! Inc. revised the shareholder voting results that it initially announced after its annual meeting which underreported the number of votes withheld from certain directors.

Appendix A
Sample Director and Officer Questionnaire

Name: _____

CONFIDENTIAL

[INSERT NAME OF COMPANY]

DIRECTORS AND OFFICERS QUESTIONNAIRE

[Insert name of company] (the "Company") is preparing an annual report on Form 10-K ("Form 10-K"), an annual report to stockholders and a Proxy Statement relating to its upcoming annual stockholders meeting. Certain information about the Company's Directors, Executive Officers and key employees will need to be included in the Form 10-K, the annual report and the Proxy Statement. The purpose of this questionnaire is to obtain that information from you so that the Company can verify the disclosures to be contained in those documents.

Please complete, sign, date and return this questionnaire to [insert contact person and address] on or before [_____ __], 200[_]. The questionnaire may also be returned by fax to [insert fax number] or e-mailed to [insert e-mail address].

If you have any questions regarding this questionnaire, please contact [insert contact person and telephone number], and [s]he will assist you.

General Instructions

1. Part I of the questionnaire should be answered by all Directors, Executive Officers and nominees. Part II should only be answered by non-executive Directors and Director nominees. Part III should only be answered by those Directors and nominees who are members of or nominees for the Company's audit committee.
2. If the answer to any question is "None" or "Not Applicable," please so state.

3. If additional space is required to answer any question, please use the "Remarks" page attached to the end of this questionnaire. Please identify all questions answered in this fashion by their respective question numbers.

4. Capitalized terms are defined in the Glossary attached to this questionnaire.

PART I – TO BE ANSWERED BY ALL OFFICERS, DIRECTORS AND NOMINEES

1. ***Background Information.*** Please verify or provide the following background information: ***[Item 7 of Schedule 14A, Item 401 of Regulation S-K]***

   (a) Full name: _____

   (b) Residential or business address and telephone number (please specify which):_____

   (c) Date of birth: _____

   (d) Are you related by blood, marriage or adoption (not more remote than first cousin) to any Director or Executive Officer or any nominee to become a Director or Executive Officer of the Company?

   Yes ❑ No ❑

   If yes, please identify the Director or Executive Officer or the nominee and the nature of the relationship:

   (e) Were you selected to serve as a Director or Executive Officer of the Company pursuant to any arrangement or understanding between you and any other person (except the Directors or Officers of the Company acting solely in their capacity as such)? ***[Item 7 of Schedule 14A, Items 401(a) and (b) of Regulation S-K]***

   Yes ❑ No ❑

   If yes, please describe the arrangement or understanding below and name the other person(s):

   _____

   _____

   _____

(f) Please confirm and update your personal biography set forth in Annex 1 to this questionnaire. The biography must describe your business experience during the past five years, including:

- principal occupations and employment;
- the name and principal business of any corporation or other organization in which such occupations and employment were carried on; and
- whether such corporation or organization is a parent, subsidiary or other Affiliate of the Company.

The biography should indicate all positions and offices that you presently hold with the Company or its subsidiaries, the period of time for which you have held each such position or office and all positions held with the Company or its subsidiaries at any time during the past five fiscal years.

If you are an Executive Officer and have been employed by the Company or a subsidiary of the Company for less than five years, please confirm that your biography contains a brief description of the nature of your responsibilities in prior positions.

Please confirm that your biography lists all other Directorships (and committee memberships) of publicly held corporations or investment companies registered under the Investment Company Act of 1940 that you presently hold. ***[Item 7 of Schedule 14A, Items 401(a), (b) and (e) of Regulation S-K]***

Is the information contained in Annex 1 to this questionnaire accurate and complete?

Yes ❑ No ❑

If no, please make the appropriate corrections to Annex 1.

(g) During the past five[1] years: ***[Item 7 of Schedule 14A, Item 401(f) of Regulation S-K]***

(i) Has a petition under the federal bankruptcy laws or any state insolvency law been filed by or against you, or has a receiver, fiscal agent or similar officer been appointed by a court for the business or property of (a) you, (b) any partnership in which you were a general partner at, or within two years before, the

1. Use ten years if the Company is incorporated in California or a non-U.S. company qualified to do business in California. ***[Sections 1502 and 2117 of the California Corporations Code]***

time of such filing or (c) any corporation or business association of which you were an Executive Officer at, or within two years before, the time of such filing?

Yes ❑ No ❑

(ii) Have you been convicted of fraud in a civil or criminal proceeding (not otherwise overturned or expunged)?

Yes ❑ No ❑

(h) During the past five years[2]: ***[Item 7 of Schedule 14A, Item 401(f) of Regulation S-K]***

(i) Have you been convicted in a criminal proceeding or named the subject of a pending criminal proceeding, excluding traffic violations and other minor offenses?

Yes ❑ No ❑

(ii) Have you been the subject of any administrative or court order, judgment, decree or consent agreement, not subsequently reversed, suspended or vacated, of any court, permanently or temporarily enjoining or limiting you from the following activities:

(A) acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the Commodity Futures Trading Commission, or an associated person of any of the foregoing, or as an investment advisor, underwriter, broker or dealer in securities, or as an affiliated person, Director or employee of any investment company, bank, savings and loan association or insurance company, or engaging in or continuing any conduct or practice in connection with such activity;

(B) engaging in any type of business practice; or

(C) engaging in any activity in connection with the purchase or sale of any security or commodity or in connection with

2. For purposes of computing the five-year period for this Question 1(h), the date of a reportable event is deemed the date on which the final order, judgment or decree was entered, or the date on which any rights of appeal from preliminary orders, judgments or decrees have lapsed. With respect to bankruptcy provisions, the computation date is the date of filing for uncontested petitions or the date upon which approval of a contested petition became final.

any violation of federal or state securities laws or federal commodities laws?

Yes ❑ No ❑

(iii) Have you been the subject of any order, judgment or decree, not subsequently reversed, suspended or vacated, of any federal or state authority barring, suspending or otherwise limiting for more than 60 days your right to engage in any activity described in subparagraph (ii)(A) above or to be associated with persons engaged in any such activity?

Yes ❑ No ❑

(iv) Have you been found by a court in a civil action or by the Securities and Exchange Commission (the "SEC") to have violated any federal or state securities law, and the judgment in such civil action or finding by the SEC has not been subsequently reversed, suspended or vacated?

Yes ❑ No ❑

(v) Have you been found by a court in a civil action or by the Commodity Futures Trading Commission to have violated any federal commodities law, and the judgment in such civil action or finding by the Commodity Futures Trading Commission has not been subsequently reversed, suspended or vacated?

Yes ❑ No ❑

If you answered yes to any of the foregoing questions in (g) and (h), please describe such event in the "Remarks" section attached at the end of this questionnaire.

2. ***Stock Ownership***.

(a) Do you know of any person(s) or group(s) that beneficially own(s) more than 5% of any class of the Company's voting securities (other than [insert names of known 5% holders])? ***[Item 6(d) of Schedule 14A, Item 403(a) of Regulation S-K]***

Yes ❑ No ❑

If yes, please provide the names and addresses of these groups below:

_____

_____

(b) Please confirm and update the chart set forth in Annex 2 to this questionnaire, which provides information regarding your share ownership, including the number of shares of each class of equity securities of the Company (or any of its parents or subsidiaries) that you "beneficially owned" on [insert appropriate date]. You "beneficially own" shares if you have the power (either alone or with some other person) to vote such shares (voting power) or the power to sell such shares (investment power). The chart also includes the number of shares for which you have the right to acquire beneficial ownership within 60 days of [insert same date as in previous brackets]. For example, if you have stock options which have vested, or will vest, on or prior to [insert date 60 days after date in previous bracket], and you will beneficially own the underlying stock upon exercise, then you should state the number of shares you would receive if you exercised those options. Annex 2 to this questionnaire also describes the nature and terms of any of your rights to acquire beneficial ownership, whether you share voting or investment power over any shares you own with any other person and whether you disclaim beneficial ownership of any of the shares listed. ***[Item 6(d) of Schedule 14A, Item 403(b) of Regulation S-K]***

Is the information contained in Annex 2 to this questionnaire accurate and complete?

Yes ❑ No ❑

If no, please make the appropriate corrections to Annex 2.

(c) Have you pledged as security any shares of any class of equity securities that you beneficially own as set forth in Annex 2, including with respect to securities held in margin accounts?

Yes ❑ No ❑

If yes, please state the number and class of equity securities below:

3. ***Compensation***. Annex 3 to this questionnaire sets forth various compensation matters relating to you. Please confirm and update as appropriate. The items to be described are all compensation you received from the Company or its subsidiaries during the last three years, including salary, bonus, other compensation including perquisites, stock awards, option awards, non-equity incentive plan awards, changes in pension values, earnings on non-qualified deferred compensation, other compensation awards, option exercises and any other arrangements pursuant to which you were compensated. ***[Item 8 of Schedule 14A, Item 402 of Regulation S-K]***

Is the information contained in Annex 3 to this questionnaire accurate and complete?

Yes ❑ No ❑

If no, please make the appropriate corrections to Annex 3.

4. ***Termination of Employment Arrangements***. Do you have any contract, agreement, plan or arrangement (whether written or unwritten) with the Company or its subsidiaries, or does the Company or its subsidiaries have any plan, under which you will receive any payment upon your termination (including, without limitation, your resignation, severance, retirement or constructive termination of your employment) or from a change in control of the Company or a change in your responsibilities following a change in control? ***[Item 8 of Schedule 14A, Item 402(j) of Regulation S-K]***

   Yes ❑ No ❑

   If yes, please briefly describe the arrangement below:[3]

5. ***Transactions with Related Persons***. Since the beginning of the Company's last fiscal year, have you or any member of your immediate family engaged in any transaction[4], or does any proposed transaction exist, in which the Company or any of its subsidiaries was or is to be a participant and the amount exceeds $120,000 and in which you or your immediate family member will have a direct or indirect interest?[5] ***[Item 7 of Schedule 14A, Item 404(a) of Regulation S-K]***

   Yes ❑ No ❑

   If yes, please briefly describe the transaction or series of similar transactions, including: (a) the name of such person and the person's

3. Item 402(j) of Regulation S-K requires description of (a) the specific circumstances that would trigger payment(s) or the provision of other benefits, (b) the estimated payments and benefits that would be provided in each covered circumstance, whether they would or could be lump sum, or annual, disclosing the duration, and by whom they would be provided, (c) how the appropriate payment and benefit levels are determined under the various circumstances that trigger payments or provision of benefits, (d) any material conditions or obligations applicable to the receipt of payments or benefits, e.g., non-compete, non-solicitation, non-disparagement or confidentiality agreements, and (e) any other material factors.

4. Pursuant to Item 404(a) of Regulation S-K, a "transaction" includes, but is not limited to, any financial transaction, arrangement or relationship (including any indebtedness or guarantee of indebtedness) or any series of similar transactions, arrangements or relationships.

5. For purposes of this Question 5, your "immediate family" includes any child, stepchild, parent, stepparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in law and any person (other than a tenant or employee) sharing your household.

relationship to the Company and/or the Company's subsidiaries; (b) the nature of such person's interest in the transaction (including the person's position or relationship with, or ownership in, a firm, corporation or other entity that is a party to, or has an interest in, the transaction); (c) the approximate dollar value of such transaction[6]; (d) the approximate dollar value of such person's interest in the transaction; and (e) any other information regarding the transaction or the person in the context of the transaction that is material to the investors in light of the circumstances of the particular transaction:

_____

_____

6. ***Change in Control***. Do you know of any arrangement, including any pledge of securities of the Company, which resulted in the last fiscal year, or may result in the future, in a change in control of the Company? ***[Item 6 of Schedule 14A, Item 403(c) of Regulation S-K]***

Yes ❑ No ❑

If yes, please briefly describe any such arrangement:

_____

_____

7. ***Adverse Interest in Legal Proceedings***. Do you know of any pending legal proceedings in which either you or any Director, Officer or Affiliate of the Company or any owner of more than 5% of any class of voting securities of the Company, or any Associate of any such Director, Officer, Affiliate or security holder, is a party adverse to the Company or any of its subsidiaries or has a material interest adverse to the Company or any of its subsidiaries? ***[Item 7 of Schedule 14A, Item 103 (inst. 4) of Regulation S-K]***

Yes ❑ No ❑

If yes, please briefly describe:

_____

_____

6. In the case of indebtedness, disclosure of the amount involved in the transaction must include (a) the largest aggregate amount of principal outstanding during the period for which disclosure is provided, (b) the amount thereof outstanding as of the latest practicable date, (c) the amount of principal paid during the periods for which disclosure is provided, (d) the amount of interest paid during the period for which disclosure is provided and (e) the rate or amount of interest payable on the indebtedness.

8. ***Section 16 Reporting Compliance***. Attached as Annex 4 to this questionnaire are copies of the Section 16 filings that the Company made on your behalf during the Company's last fiscal year. Based on a review of these filings, please answer the following questions:

   (a) Were any of your Section 16 filings (Forms 3, 4 or 5) filed after the date on which they were due to be filed?

   Yes ❑ No ❑

   If yes, please indicate the number of late filings, the number of transactions that were not reported on a timely basis and any known failure to file a required form:

   _____

   _____

   (b) Have you engaged in any transactions in the Company's securities that have not yet been reported in the most recently filed Form 5 or Form 4?

   Yes ❑ No ❑

   If yes, please briefly describe the transactions:

   _____

   _____

   (c) Is the information contained in Annex 4 to this questionnaire otherwise accurate and complete?

   Yes ❑ No ❑

   If no, please explain why below:

   _____

   _____

9. ***Compensation Committee or Similar Committee***. During the last fiscal year, have you been a member of a compensation committee or similar committee or, in the absence of such a committee, a member of the board of directors, involved in making decisions regarding compensation policy for any other company besides the Company? ***[Item 8 of Schedule 14A, Item 407(e)(4) of Regulation S-K]***

   Yes ❑ No ❑

   If yes, please indicate the company below:

   _____

   _____

PART II – TO BE ANSWERED BY NON-EXECUTIVE DIRECTORS AND DIRECTOR NOMINEES ONLY

10. ***[Independence***[7]

(a) Are you currently, or at any time during the last three years were you, an employee of the Company or any parent or subsidiary of the Company or is any Immediate Family Member currently, or at any time during the last three years was an Immediate Family Member, an executive officer[8] of the Company or any parent or subsidiary of the Company? ***[NYSE 303A.02(b)(i)]***

Yes ❑ No ❑

If yes, please briefly describe:

_____

_____

(b) Did you or any of your Immediate Family Members receive, during any twelve-month period within the last three years, more than $120,000[9] in direct compensation from the Company or any parent or subsidiary of the Company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service), or do you or any of your Immediate Family Members plan to accept such payments in the current fiscal year? ***[NYSE 303A.02(b)(ii)]***

Yes ❑ No ❑

7. This version of Question 10 assumes that the reporting company is an NYSE-listed company. This section should be tailored to take into account any Company-specific categorical independence standards.

8. For purposes of this Question 10, as prescribed by Section 303A of the NYSE's Listed Company Manual and Rule 16a-1(f) under the Securities Exchange Act of 1934, the term "executive officer" shall mean a president, a principal financial officer, a principal accounting officer (or, if there is no such accounting officer, the controller), any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function and any other person performing similar policy-making functions. Executive officers of the Company's subsidiaries may be deemed executive officers of the Company if they perform such policy-making functions for the Company.

9. Effective September 11, 2008, the NYSE changed the monetary threshold with respect to its direct compensation test from $100,000 to $120,000 to match the threshold set out in Item 404(a) of Regulation S-K.

If yes, please briefly describe:

_____

_____

(c) Are you a current partner or employee of [insert name of the independent accountant and the name of any former independent accountant] [or a firm that is the Company's internal auditor]; is any Immediate Family Member a current partner of such a firm; is any Immediate Family Member a current employee of such a firm and personally works on the Company's audit; or were you, or was any Immediate Family Member, within the last three years, a partner or employee of such a firm and personally worked on the audit of the Company or any parent or subsidiary of the Company within that time? ***[NYSE 303A.02(b)(iii)]***[10]

Yes ❑ No ❑

If yes, please indicate the entity and describe your or your Immediate Family Member(s)' role with the entity:

_____

_____

(d) Are you or are any of your Immediate Family Members currently employed, or have you or any of your Immediate Family Members been employed within the last three years, as an executive officer of another entity where any of the executive officers of the Company or any parent or subsidiary of the Company at the same time serves or served on that entity's compensation committee? ***[NYSE 303A.02(b)(iv)]***

Yes ❑ No ❑

If yes, please indicate the entity and describe your or your Immediate Family Member(s)' role with the entity:

_____

_____

10. Effective September 11, 2008, the NYSE amended the auditor affiliation test to permit a director to have an Immediate Family Member who is a current employee of a company's auditor so long as the Immediate Family Member does not personally work on the company's audit.

(e) Are you a current employee, or is an Immediate Family Member a current executive officer, of a company that has made payments to, or received payments from, the Company or any parent or subsidiary of the Company for property or services in an amount which, in any of the last three fiscal years, in excess of the greater of $1 million, or 2% of such other company's consolidated fiscal gross revenues during any of the last fiscal three years? ***[NYSE 303A.02(b)(v)]***

Yes ❑ No ❑

If yes, please indicate the organization and describe the payments and your role with the organization:

_____

_____

(f) Are you an executive officer of a charitable organization which received contributions from the Company or any parent or subsidiary of the Company in any of the three preceding years in an amount which exceeds the greater of $1 million, or 2% of the charitable organization's consolidated gross revenues? ***[NYSE 303A.02(b)(v)]***

Yes ❑ No ❑

If yes, please indicate the organization and describe the payments and your role with the organization:

_____

_____

(g) Do you have any other relationship with the Company or any parent or subsidiary of the Company, either directly or as a partner, stockholder or officer of an organization that has a relationship with the Company or any parent or subsidiary of the Company? ***[NYSE 303A.02(a)]***

Yes ❑ No ❑

If yes, please describe the relationship:]

_____

_____

[10. ***Independence***[11]

(a) Are you currently, or were you at any time during the past three years, an employee of the Company or any parent or subsidiary of the Company? ***[NASDAQ 4200(a)(15)(A)]***

Yes ❑ No ❑

If yes, please briefly describe:

_____

_____

(b) During any 12 consecutive months within the last three years, did you, or did any of your Family Members[12], accept any compensation from the Company or any parent or subsidiary of the Company in excess of $120,000[13] (other than: (i) compensation for board or board committee service, (ii) compensation paid to a Family Member who is a non-executive employee of the Company or any parent or subsidiary of the Company; and (iii) benefits under a tax-qualified retirement plan or non-discretionary compensation)?[14] ***[NASDAQ 4200(a)(15)(B)]***

Yes ❑ No ❑

If yes, please briefly describe:

_____

_____

11. This version of Question 10 assumes that the reporting company is listed on The NASDAQ Stock Market.

12. For purposes of this Question 10, the term "Family Member" means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home.

13. On August 8, 2008, the SEC approved an amendment to increase this threshold dollar amount from $100,000 to $120,000.

14. Please note that, pursuant to NASDAQ Marketplace Rule IM-4200, non-preferential payments made in the ordinary course of providing business services (such as payments of interest or proceeds 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), payments arising solely from investments in the company's securities and loans permitted under Section 13(k) of the Exchange Act will not preclude a finding of director independence as long as the payments are non-compensatory in nature. Depending on the circumstances, a loan or payment could be compensatory if, for example, it is not on terms generally available to the public.

(c) Are any of your Family Members currently serving as an executive officer[15] of the Company or any parent or subsidiary of the Company, or were any of your Family Members serving in such capacity at any time during the past three years? ***[NASDAQ 4200(a)(15)(C)]***

Yes ❑ No ❑

If yes, please briefly describe:

_____

_____

(d) Are you, or are any of your Family Members, a partner in, or a controlling stockholder or an executive officer of, any organization to which the Company made, or from which the Company received, payments for property or services in the current or any of the past three fiscal years that exceeded 5% of the recipient's consolidated gross revenues for that year, or $200,000, whichever is more (other than: (i) payments arising solely from investments in the Company's securities and (ii) payments under non-discretionary charitable contribution matching programs)? ***[NASDAQ 4200(a)(15)(D)]***

Yes ❑ No ❑

If yes, please briefly describe:

_____

_____

15. For purposes of this Question 10, as prescribed by NASDAQ Marketplace Rule IM-4200 and Rule 16a-1(f) under the Securities Exchange Act of 1934, the term "executive officer" shall mean a president, a principal financial officer, a principal accounting officer (or, if there is no such accounting officer, the controller), any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function and any other person performing similar policy-making functions. Executive officers of the Company's subsidiaries may be deemed executive officers of the Company if they perform such policy-making functions for the Company.

(e) Are you, or are any of your Family Members, employed as an executive officer of another entity where at any time during the past three years any of the Company's executive officers served on the compensation committee of the other entity? ***[NASDAQ 4200(a)(15)(E)]***

Yes ❑ No ❑

If yes, please briefly describe:

_____

_____

(f) Are you, or are any of your Family Members, a partner of [insert name of the Company's independent accountant], or have you or any of your Family Members been a partner or employee of [insert name of the Company's independent accountant] who worked on the Company's audit at any time during any of the past three years? ***[NASDAQ 4200(a)(15)(F)]***

Yes ❑ No ❑

If yes, please briefly describe:

_____

_____

(g) Do you have any other relationships (i.e., being a partner, stockholder or officer of an organization that has any commercial, industrial, banking, consulting, legal, accounting, charitable, familial or any other relationships with the Company or any of its subsidiaries) that could interfere with your exercise of independent judgment in carrying out the responsibilities as a director of the Company? ***[NASDAQ 4200(a)(15)]***

Yes ❑ No ❑

If yes, please briefly describe:

_____

_____

PART III – TO BE ANSWERED ONLY BY DIRECTORS WHO ARE MEMBERS OF OR NOMINEES FOR THE AUDIT COMMITTEE[16]

11. ***Audit Committee Independence. As a member of or nominee for the Company's audit committee:***

    (a) On how many other audit committees of public companies do you serve? ***[NYSE 303A.07(a)]***

    _____

    (b) Do you currently or do you plan to, in the current fiscal year, accept directly or indirectly any consulting, advisory, or other compensatory fee from the Company or any of its subsidiaries, other than in your capacity as a member of the audit committee, the board of directors or any other board committee or the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the Company or its subsidiaries, provided that such compensation is not contingent in any way on continued service?[17] ***[Rule 10A-3(b)(1)(ii)(A) under the Exchange Act]***

    Yes ❑ No ❑

    If yes, please describe the nature of the services that are to be provided and the fee that is to be obtained:

    _____

    _____

16. Please note that this questionnaire is only designed to elicit information necessary to determine that an audit committee member remains, or an audit committee nominee will be, independent. Please note that the questionnaire does not elicit information necessary to evaluate a director's level of financial management expertise or other qualifications for serving on the audit committee, as further required by NYSE Rule 303A.07(a) and Item 407(d)(5) of Regulation S-K.

17. For purposes of this Question 11(b), "indirect" acceptance includes acceptance of such a fee by a spouse, a minor child or stepchild or a child or stepchild sharing a home with you or by an entity in which you are a partner, member, an officer such as a managing director occupying a comparable position or Executive Officer, or occupy a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the Company or any of its subsidiaries.

(c) Other than in your capacity as a member of the audit committee, the board of directors or any other committee of the board of directors, are you an "affiliated person" of the Company or any of the Company's subsidiaries? For purposes of this Question 11(c), an affiliated person is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Company or a subsidiary of the Company. You are an affiliated person if you are, among other things, an executive officer, general partner or managing member of an affiliate of the Company, or a director who is also an employee of an affiliate.[18] ***[Rule 10A-3(b)(1)(ii)(B) under the Exchange Act]***

Yes ❑ No ❑

If yes, please describe your affiliation:

_____

_____

I hereby acknowledge that the answers to the foregoing questions are correct and complete to the best of my knowledge. If any changes in the information provided occur prior to the date of the Proxy Statement for the Annual Meeting, I will notify the Company and its counsel of such changes. I hereby consent to being named as a Director or Executive Officer of the Company in the Form 10-K, annual report and the Proxy Statement.

Date: _____, 200[____] _____
Signature

_____
Please type or print your name

18. For purposes of this Question 11(c), you are not deemed to control the Company or any of the Company's subsidiaries if you are not the beneficial owner, directly or indirectly, of more than 10% of any class of voting equity securities of the Company or its subsidiaries and you are not an executive officer of the Company or any of its subsidiaries.

REMARKS*

Question Number and Letter	Answer

* Attach additional sheets as may be necessary.

GLOSSARY

DEFINITION OF CERTAIN TERMS

With this questionnaire, certain terms have been used which have certain meanings associated with them. These terms, and their meanings, are as follows:

Affiliate: The term "Affiliate" of the Company or person "affiliated" with the Company includes any of the following persons:

1. any Director or Officer of the Company;
2. any person that directly or indirectly controls, or is controlled by, or is under common control with, the Company;
3. any person performing general management or advisory services for the Company; and
4. any "Associate" of the foregoing persons.

Associate: An "Associate" of, or a person "associated" with, you means: (i) any relative or spouse of such person or any relative of such spouse, (ii) any corporation or organization (other than the Company or its subsidiaries) of which such person is an Officer or partner or directly or indirectly the beneficial owner of 10% or more of any class of equity securities and (iii) any trust or estate in which such person has a substantial beneficial interest or as to which such person serves as a trustee, executor or in a similar fiduciary capacity.

Beneficially Owned: A "beneficial owner" of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares (i) ***voting power***, including the power to direct the voting of such security, or (ii) ***investment power***, including the power to dispose of, or direct the disposition of, such security. In addition, a person is deemed to have "beneficial ownership" of a security of which such person has the right to acquire beneficial ownership at any time within 60 days, including, but not limited to, any right to acquire such security: (i) through the exercise of any option, warrant or right, (ii) through the conversion of any security or (iii) pursuant to the power to revoke, or the automatic termination of, a trust, discretionary account or similar arrangement.

It is possible that a security may have more than one "beneficial owner," such as a trust, with two co trustees sharing voting power, and the settlor or another third party having investment power, in which case each of the three would be the "beneficial owner" of the securities in the trust. The power to vote or direct the voting, or to invest or dispose of, or direct the investment or disposition of, a security may be indirect and arise from legal, economic, contractual or other rights, and the determination of beneficial ownership depends upon who ultimately possesses or shares the power to direct the voting or the disposition of the security.

The final determination of the existence of beneficial ownership depends upon the facts of each case. You may, if you believe the facts warrant it, disclaim beneficial ownership of securities that might otherwise be considered "beneficially owned" by you.

Control: The term "control" (including the terms "controlling," "controlled by" and "under common control with") means possession, directly or indirectly, 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.

Director: For purpose of this Questionnaire, "Director" shall mean any Director of a corporation, trustee of a trust, general partner of a partnership, or any person who performs for an organization functions similar to those performed by the foregoing persons.

Executive Officer: The term "Executive Officer" means a president, vice president in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function or any other person who performs similar policy-making functions for the Company. Executive Officers of the Company's subsidiaries may be deemed executive officers of the Company if they perform such policy-making functions for the Company.

Immediate Family Member:[19] "Immediate Family Member" of a person means the 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.[20]

19. Include this definition if NYSE-listed company.

20. A proposed NYSE amendment, which is currently pending SEC approval, would revise the definition of "Immediate Family Member" to clarify that the term does not include adult stepchildren that do not share a stepparent's home or the in-laws of such stepchildren.

Material: The term "material," when used to qualify a requirement for the furnishing of information as to any subject, unless otherwise indicated, limits the information required to those matters as to which there is a substantial likelihood that a reasonable investor would attach importance in determining whether to purchase the Company's common stock.

Officer: The term "Officer" means a president, vice president, secretary, treasurer or principal financial officer, controller or principal accounting officer and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated.

Person: The term "person" means an individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization or a government or political subdivision thereof.

ANNEX 1

[Annex 1 should contain the biographic information regarding the relevant director or executive officer, including the following items:

- Identifying information regarding the person, including name, age, positions and offices with the company held by such person, term of office as director or officer and the period during which he or she has served as such. ***[Item 7(b) of Schedule 14A, Items 401(a)-(c) of Regulation S-K]***
- Business experience of the person during the past five years, including: (1) the person's principal occupations and employment during the past five years, (2) the name and principal business of any corporation or other organization in which such occupations and employment were carried on and (3) whether such corporation or organization is a parent, subsidiary or other affiliate of the Company. ***[Item 7(b) of Schedule 14A, Item 401(e) of Regulation S-K]***[21]
- All positions and offices presently held by the person with the Company or its subsidiaries and the period of time during which such person has held each such position or office. If the person is not currently employed by the Company or any of its subsidiaries, Annex 1 should include information as to whether such person has been employed by the Company at any time during the past five fiscal years. ***[Item 7 of Schedule 14A, Items 401(a) and (b) of Regulation S-K]***
- All directorships held by the person in publicly reporting companies and U.S. registered investment companies, including the name and/or nature of board committees on which such individual serves. ***[Item 7(b) of Schedule 14A, Item 401(e) of Regulation S-K]]***

21. When an executive officer or other person named has been employed by the Company or a subsidiary of the Company for less than five years, a brief explanation shall be included as to the nature of the responsibility undertaken by the individual in prior positions to provide adequate disclosure of his or her prior business experience. Specifically, information relating to the level of his or her professional competence should be included.

ANNEX 2

[Annex 2 should contain security ownership information regarding the relevant director or executive officer, as required pursuant to Item 6(d) of Schedule 14A and Item 403(b) of Regulation S-K. Below please find an example of a chart that should be included in Annex 2, to be verified by the individual.

	Equity Securities
(i) Sole Voting Power	_____
(ii) Shared Voting Power	_____
(iii) Sole Investment Power	_____
(iv) Shared Investment Power	_____
(v) Right to Acquire by [insert date 60 days after date as of which ownership is being assessed]	_____

In addition to confirming security ownership, Annex 2 should also describe the nature and terms of any of the individual's rights to acquire beneficial ownership.]

ANNEX 3

[Annex 3 should describe all compensation received by the director or executive officer from the Company or its subsidiaries during the last three fiscal years, including (but not limited to):

- salary;
- bonus;
- perquisites;[22]
- stock awards;
- option grants;
- earnings for services performed pursuant to awards under non-equity incentive plans;
- change in pension value and nonqualified deferred compensation earnings;
- gross-ups or other amounts reimbursed during the fiscal year for the payment of taxes;
- option exercises;
- consulting fees earned from, or paid or payable by the Company and/or its subsidiaries (including joint ventures);
- annual costs of payments and promises of payments pursuant to d irector legacy programs and similar charitable award programs;
- the dollar value of any insurance premiums paid by, or on behalf of, the Company during the covered fiscal year with respect to life insurance for the benefit of a director; and
- any other arrangements pursuant to which such director or executive officer was compensated.

Please note that the summary compensation table includes a final column which will report total annual compensation, in dollars, for each

22. The rules require disclosure of perquisites and other personal benefits or property unless the aggregate amount of such compensation is less than $10,000. If the total value of all perquisites and personal benefits is $10,000 or more for any named executive officer, then each perquisite or personal benefit, regardless of amount, must be identified by type. If the perquisite reporting threshold is triggered, each perquisite or personal benefit that exceeds the greater of $25,000 or 10% of the total amount of perquisites and personal benefits for that officer must be quantified and disclosed in a footnote in the proxy statement.

reported person. This total compensation will include essentially all items of annual compensation, including many not currently reported with dollar values.

- all stock awards, specifically reporting the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R;
- all option awards, specifically reporting the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R; and
- the aggregate increase in the actuarial value of pension plans.

Consider including additional compensation information that will need to be disclosed in the proxy statement pursuant to items such as the following:

- Grants of Plan-Based Awards Table
- Outstanding Equity Awards at Fiscal Year-End Table
- Option Exercises and Stock Vested Table
- Pension Benefits Table
- Potential Payments upon Termination or Change-in-Control
- Director Compensation Table]

ANNEX 4

[Annex 4 should include all Form 3, Form 4 and Form 5 filings made by the Company on behalf of the Director or Executive Officer during the last fiscal year.]

Appendix B – Sample Annual Meeting Timetable

Time Until Meeting	Task
180 days	Circulate preliminary schedule among management and outside advisors.
	Choose and reserve venue for meeting. Make transportation and accommodation arrangements for officers, directors and other attending corporate representatives. Arrange security for location.
	Reserve chairs, tables, audio/video and other equipment for meeting.
	Determine whether any matters for shareholder vote require filing of a preliminary proxy statement with the SEC.
	Review and revise Director and Officer questionnaires.
150-120 days	Evaluate shareholder proposals received to determine compliance with Rule 14a-8 and the advance notice provisions of the company's organizational documents. Determine whether there are bases to challenge proposals on procedural or eligibility grounds (within 14 days of company's receipt of the proposal in the case of a Rule 14a-8 proposal).
	Contact a financial printer to schedule printing and mailing of proxy materials.
	Prepare initial drafts of proxy materials, annual report and other materials (such as the meeting rules of conduct and admission rules).
	Circulate and collect Director and Officer questionnaires.
90 days	Obtain comments from management and outside counsel on drafts of materials to be included in the proxy mailing.

Time Until Meeting	Task
	Hold directors' meeting to adopt board resolutions designating corporate director nominees, authorizing the record date, approving location and time of meeting, approving notice of meeting, proxy materials and annual report and appointing the inspector of elections.
	Submit revised proxy materials to financial printer.
	Notify transfer agent and relevant listing stock exchange of record date and meeting date. NYSE rules require notice at least 10 days prior to the record date.
	Notify transfer agent of shareholder list requests. Contact institutional holders of record for lists of beneficial owners and quantities of proxy materials needed. Rule 14a-13 requires completion at least 20 business days prior to the record date. NYSE rules require completion 10 business days prior to the record date.
80 days	If necessary, file preliminary proxy materials with the SEC and the relevant exchange. Rule 14a-6 requires filing 10 days before definitive copies are mailed, but appropriate time should be budgeted to allow for staff review.
	SEC no-action letter requests to exclude Rule 14a-8 proposals must be submitted at least 80 days prior to filing of definitive proxy statement.
60 days	Earliest possible record date for Delaware corporation.
40 days	If the company is using the Notice Only option under the e-proxy rules, the company must post its proxy materials on an Internet website and send a Notice of Internet Availability of Proxy Materials to shareholders at least 40 days prior to the meeting. Because intermediaries must also comply with the new e-proxy rules to obtain voting instructions from the beneficial owners of the company's stock, appropriate time should be allotted to coordinate the delivery of information required to allow the intermediary to prepare and send its e-proxy compliant notice 40 days prior to the annual meeting.
	File definitive proxy materials with the SEC. Post proxy materials on Internet website and mail proxy materials, annual report, meeting notices and other materials or, if the company is using the Notice Only option, the Notice of Internet Availability of Proxy Materials. Also submit proxy materials to the relevant exchange.

Time Until Meeting	Task
20-30 days	Prepare agenda, scripts, management presentation, ballots, resolutions, motions and oath of inspector of elections.
	Prepare and distribute briefing book to chairperson and other corporate representatives.
	Prepare information packets for attendees.
	Arrange for refreshments, signs for meeting room, press room and registration desk. Confirm prior reservations.
10 days	Make shareholder list available.
	Brief/rehearse with corporate representatives.
0	Hold Annual Shareholders' Meeting.
Post-Meeting	Make 10-K and 10-Q filings as appropriate. File meeting minutes in corporate records. Report voting results to shareholders.

Appendix C
Sample Annual Meeting Agenda

AGENDA
20__ ANNUAL MEETING OF SHAREHOLDERS OF [CORPORATION]

_____, 20__

I. Call the Meeting to Order

A. Introduction

B. Rules of Conduct

C. Proof of Notice of Meeting

D. Report on Quorum; Proxies

II. Proposals and Discussions

A. Proposal 1: Election of Directors

Persons nominated are: [Insert names of nominees]

B. Proposal 2: [enter other proposals and attach copies of resolutions]

III. Voting

[If you have provided your proxy card, your shares will be voted accordingly. Do NOT sign a ballot unless you want to change your proxy vote.]

A. Announce Time and Opening of Polls

B. Voting on Proposals

C. Announce Time and Closing of Polls

IV. Results of Voting

V. Adjournment of Official Portion of Meeting

VI. Presentation of Reports on Corporate Affairs

VII. Questions and Answers

VIII. Adjournment

Appendix D – Sample Annual Meeting Script

ANNUAL MEETING OF STOCKHOLDERS
[COMPANY NAME]

[TIME]
LOCAL TIME
[DATE]

I. Call the Meeting to Order

A. Introduction

CHAIRPERSON: Good [morning/afternoon/evening] ladies and gentlemen and welcome to the [20__] annual meeting of shareholders of [company]. I am [name], Chairperson of the Board of Directors, and I will be presiding over this meeting. At this time, I call the meeting to order. If you have not yet received copies of the Agenda or Rules of Conduct, please raise your hand and copies will be brought to you. Everyone should also have already signed in at the registration desk. If you have not signed in, please do so after receiving copies of the Agenda and Rules of Conduct.

Also present today are:

[Introduction of directors, officers and guests; be sure to individually name each director present].

[Name] will act as Secretary and timekeeper of the meeting. The Board of Directors has appointed [name] of [transfer agent] to act as Inspector of Elections. [He/she] has previously taken [his/her] oath as an Inspector of Elections.

[Name], a representative from [name of independent auditor], is also present today. During the question and answer period at the end of the meeting, [he/she] will be available to answer questions concerning the company's financial statements.

B. Rules of Conduct

CHAIRPERSON: You should now all have a copy of the Rules of Conduct for this meeting. In order to conduct an orderly meeting, we ask that participants follow these rules. As stated in the Rules of Conduct, shareholders should not address the meeting until recognized. Should you desire to ask a question or speak during the meeting, please raise your hand or step to the microphone. After being recognized, please identify yourself and your status as a shareholder or proxy holder and then state your point or ask your question. As stated in the Rules of Conduct, please limit your remarks to corporate business and make them no longer than [three] minutes.

C. Proof of Notice of Meeting

CHAIRPERSON: As noted in the Notice and Proxy Statement previously given to you, the record date for voting at this meeting was the close of business on [date]. A list of shareholders on the record date is available for your review. The Secretary has delivered an Affidavit of Mailing to show that notice of this meeting was given. A copy of both the Notice and the Affidavit will be incorporated into the minutes.

D. Report on Quorum; Proxies

CHAIRPERSON: The Secretary will now report on the existence of a quorum for the meeting.

SECRETARY: The shareholder list shows that holders of [number] shares of common stock of the company are entitled to vote at this meeting. We are informed by [Inspector of Elections] that there are represented in person or by proxy [number] shares of common stock, or approximately [percent]% of all shares entitled to vote at this meeting.

CHAIRPERSON: Based upon the percentage of the total shares of the company held by holders of record now present at the meeting, either in person or by proxy, a quorum is present. This meeting is now duly convened for the purposes of transacting business properly before it.

II. Proposals and Discussions

CHAIRPERSON: The next order of business is a description of matters properly brought before this meeting. As you are aware, shareholder proposals should have been submitted by [date]. Properly submitted proposals are listed on the Agenda and in the Proxy Materials previously distributed to you.

Following the business portion of this meeting, the President, [name], and Chief Financial Officer, [name], will provide a report on current corporate affairs, after which there will be a Question and Answer session.

A. Proposal 1: Election of Directors

CHAIRPERSON: The first item of business today is the election of directors. [number] directors are to be elected today. Those [number] nominees receiving the highest number of votes of shares present in person or by proxy at this meeting will be elected as directors. Directors elected today will hold office until the [year] Annual Meeting of Shareholders and their successors are elected and qualified. The nominees are listed in your Proxy Materials and on the Agenda.

The board of directors of the company recommends the following nominees:

[names of nominees]

Other nominees not recommended by the board of directors of the company include:

[names of other nominees]

The company has an advance notice provision in its bylaws. Accordingly, all nominations are closed. Does anyone have any questions concerning this proposal?

[If there are any attempted nominations of directors or proposals from the floor, see ALTERNATIVE SCRIPTS I or II for responses. If a meeting attendee presents a non-Agenda item, see ALTERNATIVE SCRIPT V.]

[The Chairperson may allow discussion of the nominees and let nominees address the meeting. The Chairperson should exercise his power to limit discussion if necessary. See ALTERNATIVE SCRIPT III for time limitation response]

CHAIRPERSON [at close of discussion]: Voting will commence after all proposals have been presented. We will now move to Proposal 2.

B. Proposal 2: [insert appropriate text]

CHAIRPERSON [at close of proposals]: Because no further business is on the Agenda to come before this meeting, we will move on to voting.

III. Voting

CHAIRPERSON: If you have provided your proxy card, your shares will be voted accordingly. If you are currently holding a proxy card, please turn it in at the opening of the polls. Please do not fill out a ballot unless you want to change your proxy vote. Voting will proceed after I declare that the polls are open. You will be given [minutes] to complete and submit your ballots. If you desire a ballot, please raise your hand to so indicate and one will be brought to you.

A. Announce Time and Opening of Polls

CHAIRPERSON: The time is [time], and I declare the polls now open for each matter to be voted on today, [date].

B. Voting on Proposals

[Allow time to complete and submit the ballots.]

SECRETARY: If you have not already done so, please provide your proxy or ballot to the Inspector of Elections.

C. Announce Time and Closing of Polls

CHAIRPERSON: I declare the polls now closed at [time], today [date] and ask that the Inspector of Elections collect and tabulate the ballots.

IV. Results of Voting

[Confirm with the Inspector of Elections that the ballots have been counted.]

CHAIRPERSON: Will the Secretary please report the results of voting?

SECRETARY: The Inspector of Elections has informed us that the ballots have been tabulated and that the following nominees have been duly elected: [Report directors elected and votes received by each, followed by any additional results.].

V. Adjournment of Official Portion of Meeting

CHAIRPERSON: If there is no further official business to come before this meeting, do I have a motion for adjournment?

[Wait for motion.]

CHAIRPERSON: Does anyone second?

[Wait for second.]

CHAIRPERSON: You have heard the motion to adjourn the meeting.

All those in favor say "Aye."

[Pause for response.]

CHAIRPERSON: All those opposed say "No."

[Pause for response.]

CHAIRPERSON: The motion is carried. I declare the meeting to be officially adjourned at [time], [date]. We will now proceed with the informal portion of the meeting.

VI. Presentation of Reports on Corporate Affairs

CHAIRPERSON: The President and Chief Financial Officer will now make brief reports to you about the company. Please reserve your questions and comments for the Question and Answer period following the reports.

[Presentation of Reports]

VII. Questions and Answers

CHAIRPERSON: This concludes the management presentation. I will now open the floor to questions. Please remember to follow the Rules of Conduct, especially regarding the time limit. If you would like to be recognized, please raise your hand or step to the microphone.

[For questions not germane to the business of the company, see ALTERNATIVE SCRIPT VI.]

[For comments exceeding the time limit, see ALTERNATIVE SCRIPT III.]

VIII. Adjournment

CHAIRPERSON: Our program for the day has concluded. Thank you all for attending today's meeting and for your continuing support of the company.

ALTERNATIVE SCRIPT I

SHAREHOLDER NOMINATES PERSON FOR DIRECTOR FROM THE FLOOR

The nomination was not made in conformity with the advance notice provisions of the company's bylaws. If you wish to nominate

someone you must follow the rules for doing so and comply with the advance notice provisions in our bylaws.

[If a shareholder continues with negative comments about nominees, the Chairperson should generally not directly respond and proceed to voting or the next item.]

ALTERNATIVE SCRIPT II

PROPOSAL/MOTION FROM THE FLOOR

The proposal was not made in conformity with the advance notice provisions of the company's bylaws. If you wish to make a proposal you must follow the rules for doing so and comply with the advance notice provisions in our bylaws.

ALTERNATIVE SCRIPT III

SHAREHOLDER EXCEEDS TIME LIMIT

I'm sorry, but you have exceeded the time limit set forth in the Rules of Conduct. Please promptly conclude your remarks.

[If the shareholder continues]

I repeat, you have exceeded the time limit set forth in the rules. Time limits have been imposed so that everyone may have a chance to speak and so that we may conduct the meeting in an orderly manner. Now please take your seat [so that we can respond to your comment/so that others may speak].

[If the shareholder persists]

Your conduct is out of order. Please stop speaking so that we may continue with the meeting in an orderly manner. Otherwise, you will be asked to leave the meeting, and, if necessary, removed from this room.

[If the shareholder continues to persist]

Sir/Madam, I have repeatedly asked you to stop your disruptive conduct and have advised you that your action is out of order. You have, however, chosen not to comply with my request. As Chairperson, I must now ask you to leave this meeting.

[If the shareholder persists further, request that security turn off his/her microphone. If the shareholder does not sit down quietly, instruct security to remove him/her.]

ALTERNATIVE SCRIPT IV

REQUEST FOR QUIET

I must request that you please refrain from speaking if you are not recognized so that we may continue with the orderly conduct of this meeting. [If not during the question and answer period, also state: "You will have the opportunity to ask questions about the business and financial condition of the company after we have conducted the formal items of business."]

[If the shareholder persists]

If you are not recognized, your conduct is out of order. Please stop speaking so that we may continue with the meeting in an orderly manner. Otherwise, you will be asked to leave the meeting, and, if necessary, removed from this room.

[If the shareholder continues to persist]

Sir/Madam, I have repeatedly asked you to stop your disruptive conduct and have advised you that your actions are out of order. You have, however, chosen not to comply with my request. As Chairperson, I must now ask you to leave this meeting.

[If the shareholder persists further, request that security turn off his/her microphone. If the shareholder does not sit down quietly, instruct security to remove him/her.]

ALTERNATIVE SCRIPT V

SHAREHOLDER ASKS TO BE HEARD ON MATTERS OUTSIDE THE AGENDA

There is an order of business set out in the Agenda so that we can proceed in an orderly and expeditious manner. All discussions should be limited to the proposals that are the subject of this meeting or saved for the Question and Answer session.

[If the shareholder persists]

Your comments are beyond the scope of this meeting as indicated on the Agenda. If you would like to speak with someone from the company about this issue, please wait until after the meeting when a company representative will discuss the matter with you or arrange to speak with you at a later time. Please stop speaking so that we may continue with the meeting in an orderly manner. Otherwise, you will be

asked to leave the meeting, and, if necessary, removed from this room. [If appropriate, the Chairperson may ask the assembled shareholders if they wish to continue the divergent topic, rather than with the Agenda. The Chairperson should simply ask for "Ayes" or "Nays."]

[If the shareholder persists]

Sir/Madam, I have repeatedly asked you to stop your disruptive conduct and have advised you that your actions are out of order. You have, however, chosen not to comply with my request. As Chairperson, I must now ask you to leave this meeting.

[If the shareholder persists further, request that security turn off his/her microphone. If the shareholder does not sit down quietly, instruct security to remove him/her.]

ALTERNATIVE SCRIPT VI

SHAREHOLDER ASKS QUESTION THAT DOES NOT RELATE TO CORPORATE BUSINESS

Your comments are not germane to the business of the company. We are here only to discuss issues that directly relate to the company, and this topic is too far removed to be relevant to this meeting. Please limit your comments to matters relevant to corporate business only.

[If the shareholder persists]

Your comments are beyond the business of this meeting. If you would like to speak with someone from the company about this issue, please wait until after the meeting when a company representative will discuss the matter with you or arrange to speak with you at a later time. Please stop speaking so that we may continue with the meeting in an orderly manner. Otherwise, you will be asked to leave the meeting, and, if necessary, removed from this room.

[If the shareholder persists]

Sir/Madam, I have repeatedly asked you to stop your disruptive conduct and have advised you that your actions are out of order. You have, however, chosen not to comply with my request. As Chairperson, I must now ask you to leave this meeting.

[If the shareholder persists further, request that security turn off his/her microphone. If the shareholder does not sit down quietly, instruct security to remove him/her.]

Appendix E
Sample Annual Meeting Rules of Conduct

Welcome to the Annual Shareholders' Meeting of [****]. In fairness to all participants and in the interest of an orderly and constructive meeting, the following rules of conduct will be enforced:

1. All attendees must register at the registration desk before entering the room.
2. The meeting will follow the schedule set forth on the Agenda.
3. Only shareholders of record as of [record date] or their duly authorized proxies are entitled to vote or to address the meeting.
4. You need not vote at this meeting if you have already voted by proxy. If you wish to change your vote or if you have not voted, please request a ballot at the opening of the polls and turn in the completed ballot before the close of the polls.
5. Only orderly proposals will be considered. Under the rules governing this company, proposals must be submitted [****] days in advance of the meeting. Failure to have timely submitted a proposal will cause it to be out of order and will bar it from consideration. Such proposals may be submitted in advance of the next annual meeting.
6. No one may address the meeting unless recognized by the Chairperson.
7. If you wish to be recognized, please raise your hand or step to the microphone. When recognized by the Chairperson, please state your name, indicate whether you are a shareholder or a proxy holder and succinctly state your question or comment.
8. All questions and comments must be directed to the Chairperson.
9. Each speaker is limited to a total of three (3) questions or comments of no more than three (3) minutes each. Allow other

attendees to be recognized before asking to be recognized a second time. Questions must be relevant to the business of the corporation or the conduct of its operations. Questions may NOT relate to pending or threatened litigation, be repetitious or deal with tangentially related general economic, political or other opinions or facts.

10. Please permit each speaker to conclude his or her remarks without interruption. The Chairperson will stop speakers when they are out of order.
11. No cameras, audio or video recording equipment, communication devices or other similar equipment may be brought into the meeting.
12. Attendees who fail to comply with these Rules of Conduct risk being removed from the meeting.

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