

2010 Annual Meeting Handbook

A PRACTICAL GUIDE FOR DIRECTORS AND EXECUTIVES

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2010 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 31, 2009. To access many useful resources and to obtain updates on the latest developments in securities law and compliance, visit SecuritiesConnect™ at www.bowne.com.

In light of recent turmoil in the financial markets and the resultant push for reforms to the machinery of corporate elections and to corporate governance and proxy statement disclosure, the 2010 annual meeting season promises to be particularly challenging. Accordingly, there are more advantages than ever to engaging in thorough advance preparation and taking a fresh look at established strategies for communicating with shareholders. A thoughtful and comprehensive approach will help to ensure that proxy materials for annual meetings in 2010 comply with all applicable regulatory requirements, convey information effectively and take sufficient account of the prevailing business environment and shareholder attitudes.

LEGAL FRAMEWORK GOVERNING THE ANNUAL MEETING

A number of laws and regulations govern the legal requirement that an annual meeting of shareholders be held and the content and dissemination of proxy materials for such a meeting. 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 requirements applicable to shareholder voting and meetings. For example, state law may dictate whether the annual meeting must be held within the state, 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.

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1. State corporate laws, subject to a company's organizational documents, which often limit or prohibit shareholder action by written consent, 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 a written consent, setting forth the action to be taken, to be signed and dated by the holders of outstanding shares having at least the minimum number of votes required to take such action at the meeting if all shares entitled to vote 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 are entitled to receive notice and who did not consent to the matter. If a company subject to the federal proxy rules elects to take action by written consent of shareholders without a meeting, it will likely need to file an information statement on Schedule 14C, which must contain substantially the same disclosure as a proxy statement on Schedule 14A.

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, pursuant to Section 211 of the General Corporation Law of the State of Delaware, if no annual meeting for the election of directors has been held by a Delaware corporation within 13 months after the last annual meeting or for a period of 30 days after the date designated for the annual meeting, the Delaware 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 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 and the form of the proxy itself and for 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 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 shareholders

and beneficial owners holding stock through intermediaries. In addition, exchanges such as the NYSE and the 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.

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, 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.

Many companies have recently amended their advance notice bylaws to ensure that they are clear that shareholders may only bring board nominations or other business before a meeting if they have given the company timely notice of the business to be transacted and that business is a proper subject for shareholder action. Some companies have also recently amended their advance notice bylaws or have otherwise sought to require that shareholder proponents disclose to the company not only 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 that otherwise permit those persons to benefit economically from changes in the value of the company’s securities. 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 of the numerosity and the geographic breadth of the shareholder base of most public companies, 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 that they have essentially occupied the field, 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. Solicitation

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(b) 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)(1) similarly broadly defines the term “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 related persons) not seeking the power to act as proxy for the shareholder 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-17 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 such a forum is still required to comply with the federal securities laws, including the anti-fraud rules. A participant in an electronic shareholder forum remains eligible to solicit proxies in accordance with Regulation 14A after the participant ceases to rely on the electronic shareholder forum exemption.

IV. When Preliminary Proxy Materials Must be Filed

Unless 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, Rule 14a-6(a) of Regulation 14A provides 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 does not extend to the ratification or approval by shareholders of awards made pursuant to such plans. Furthermore, the exemption 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

The primary concern of the SEC staff in reviewing preliminary proxy materials has been to ensure that they contain the requisite disclosures, comply with the applicable SEC rules and explain the corporate matters to be acted upon 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 company would normally submit the final changes to the SEC staff for review prior to the filing and distribution 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 on behalf of 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. In late 2009, SEC officials indicated that the SEC is conducting an in-depth review of "proxy plumbing" issues, including shareholder communications and the impact of the NOBO/OBO distinction.

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 that take advantage of the Notice Only option under the e-proxy rules to avoid mailing full sets of proxy materials to all shareholders. If a beneficial

owner has not provided voting instructions at least 10 days before a meeting, a broker that is a member of the NYSE may vote those shares only on matters that are not deemed to be “non-routine” under the NYSE rules. A broker non-vote generally occurs when an entity holding shares in street name is not permitted to vote the shares on a non-routine matter because it has not received voting instructions from the beneficial owner.

On July 1, 2009, the SEC approved a proposal by the NYSE to amend NYSE Rule 452 and corresponding Section 402.08(B) of the NYSE Listed Company Manual to classify uncontested director elections as non-routine matters that are not eligible for broker discretionary voting. Because most large brokerage firms are NYSE member organizations, this change will affect all public companies and not only those listed on the NYSE. In general, for shareholder meetings held on or after January 1, 2010, brokers holding shares in street name on behalf of beneficial owners will be prohibited from voting those shares in director elections, including uncontested elections, unless the beneficial owners have provided specific voting instructions to the brokers. In light of uncontested director elections now being treated as a non-routine matter, a company seeking to ensure the achievement of a quorum may wish to confirm that auditor ratification or some other proposal that the NYSE rules treat as routine appears on its 2010 annual meeting agenda.

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 shares are usually not considered to be “entitled to vote” on the matter and, as a result, will not be included in the denominator when the voting standard is a specified percentage of the shares present and entitled to vote. In such a situation, when the denominator is a smaller number, there will be fewer “for” votes required to pass such a proposal. However, when a broker has not received voting instructions but is entitled to vote on the matter because it is not a non-routine matter, the shares 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 a company’s outstanding shares.

VII. Provision of Proxy Materials to Shareholders

Companies must make their 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, an issuer sends a proxy card to Cede & Co. reflecting its record ownership on the record date for the meeting. Cede & Co. then issues an omnibus proxy to each DTC participant to give such DTC participant/intermediary voting rights over the shares that 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.

In accordance with Rule 14a-13(a), companies will generally contact institutional holders of record (e.g., brokers, dealers, banks and others holding shares in a "street" or "nominee" name) at least 20 business days prior to the record date for a meeting for lists of beneficial owners to determine the number of sets of proxy materials the companies will need to mail to such owners. 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 Notice Only 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 provides 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

Pursuant to Rule 14a-16 of Regulation 14A, 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. Once it has complied with this mandatory component of the e-proxy rules, a soliciting person may 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. 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 public 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. In addition to being freely accessible to the public, the website on which the soliciting person posts its proxy materials 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.

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, shareholders 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 at the time 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 freely available on a 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 and 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 e-proxy rules in substantially the same manner as a 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. In addition, 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 SEC guidance regarding electronic delivery. 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.

Use of 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 that have adopted the Notice Only option have experienced significant decreases in retail shareholder voting participation. Accordingly, companies or soliciting persons seeking to maximize shareholder participation may wish to use the Full Set Delivery option, at least for certain categories of 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 (taking into account the likely impact of the elimination of broker discretionary voting in uncontested director elections resulting from the change to NYSE Rule 452); whether proxy advisory firms, such as RiskMetrics Group, have issued recommendations against the company; and the degree of outreach (such as reminder mailings) the company is prepared to conduct to encourage participation under the Notice Only option. In addition, use of the Notice Only option 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 companies and other soliciting persons using the Notice Only option.

On October 14, 2009, the SEC proposed amendments to the rules governing the delivery of proxy materials via the Internet. The proposals would amend Rule 14a-16 to:

- permit companies and other soliciting persons to dispense with the prescribed language in the legend and would instead simply

require that the Notice address certain topics without specifying the language that must be included. The only mandatory language in the legend would be the heading **“Important Notice Regarding the Availability of Proxy Materials for the Shareholder Meeting to be Held on [insert meeting date]”**;

- permit companies and other soliciting persons to include along with the Notice an explanation of the model for electronic delivery of proxy materials; and
- require a soliciting person other than the company using the Notice Only option to either (1) send the Notice 40 days prior to the meeting date or (2) file a preliminary proxy statement and then send the Notice to shareholders no later than the date on which such other soliciting person files its definitive proxy statement with the SEC.

The SEC has also requested comments about the possibility of changing the deadline for companies and other soliciting persons using the Notice Only option to send the Notice from 40 days prior to the meeting to 30 days prior to the meeting.

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 and Item 23 of Schedule 14A, the company, or the intermediary delivering the proxy materials and annual reports on behalf of the company, may deliver a single set of proxy materials to multiple shareholders located at a single address. This process is known as “householding.” The following conditions must be satisfied before a company is permitted to “household”:

- the set of proxy materials must be delivered to the shared address;
- the set of proxy materials 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 set of proxy materials as described under the rule;

- if a proxy statement is being delivered, 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 single notice of meeting may be delivered to multiple shareholders at one address only 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 of meeting, can be revoked only 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. 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). 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, 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 provided 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. The NASDAQ allows EDGAR filings to fulfill the exchange’s 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.

On December 16, 2009, the SEC adopted several changes to the disclosure requirements regarding compensation and corporate governance that will be in effect for the 2010 proxy season. On December 22, 2009, the SEC issued transition guidance regarding the implementation schedule for these amendments. If a company's fiscal year ends on or after December 20, 2009, its Annual Report on Form 10-K and its proxy statement must comply with these new requirements if they are filed on or after February 28, 2010. If a company with a fiscal year ending on or after December 20, 2009 is required to file a preliminary proxy statement and expects to file its definitive proxy statement on or after February 28, 2010, then the preliminary proxy statement must be in compliance with the new disclosure requirements, even if the preliminary proxy statement is filed before February 28, 2010. If a company with a fiscal year ending on or after December 20, 2009 files its Form 10-K before February 28, 2010 and its proxy statement on or after February 28, 2010, the new disclosure requirements will apply to the proxy statement but not to the Form 10-K.

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, "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 stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting." The same dates apply in regard to fixing the "record date" for notice of the meeting, which is the date upon which share ownership is assessed to determine who is entitled to notice of the meeting of shareholders.

A company's organizational documents should be reviewed in connection with setting record dates 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 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 through the Internet should ensure that the Notice that is mailed also satisfies all requisite state law requirements for a meeting notice. 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 for 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. Under NYSE Rule 452 and NYSE Listed Company Manual Section 402.08, an entity 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" matters if the beneficial owner of the shares has not provided voting instructions at least

10 days before a meeting. The 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. In a significant change from prior years, uncontested elections of directors are now considered to be non-routine. To provide clarity about whether broker discretionary voting will be allowed for each proposal, the NYSE Weekly Bulletin lists pending shareholder meetings and indicates whether each proposal is routine or non-routine.

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, director nominees, executive officers and persons chosen to serve as executive officers must be disclosed in the proxy statement, in tabular form (if practicable), pursuant to Item 7(b) of Schedule 14A and Item 401 of Regulation S-K. The new proxy disclosure requirements adopted by the SEC in December 2009 expand the biographical disclosure requirements and require that information be provided for all directors rather than only for those standing for election in a particular year. The new rules also require companies to discuss director and nominee qualifications to serve as directors.

As revised, Item 401 of Regulation S-K requires disclosure of:

- the names and ages of all directors, director nominees and executive officers of the company;
- all positions and offices with the company held by each such director, director nominee and executive officer and the term of office and the periods the person served in that position;
- any arrangement or understanding between the director, director nominee or executive officer and any other person (naming such person) pursuant to which he or she was or is to be selected as a director, director nominee or executive officer;
- the nature of any family relationship between any director, director nominee or executive officer;
- a brief description of the business experience during the past five years of each director, director nominee and executive officer, including each person’s principal occupations and employment during the past five years;
- a brief discussion of the specific experience, qualifications, attributes or skills that led to the conclusion that each director and director nominee should serve as a director of the company;

- any other directorships of public companies held during the past five years by each director or director nominee, regardless of whether the individual continues to serve on such boards; and
- a description of certain legal or regulatory proceedings during the past 10 years involving any director, director nominee or executive officer of the company.

The significant changes to the requirements of Item 401 of Regulation S-K adopted in December 2009 are (1) the addition of a new requirement to discuss director and nominee experience, qualifications, attributes or skills; (2) the requirement to disclose all directorships of public companies held during the past five years rather than only those currently held; (3) the requirement to disclose specified legal or regulatory proceedings during the past 10 years rather than only during the past five years; and (4) the expansion of the range of covered legal and regulatory proceedings. In addition, as discussed below, the SEC has also adopted amendments to Item 407(c) of Regulation S-K to require companies to disclose whether and how diversity is used in selecting director nominees.

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 (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 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. Companies may also wish to pay particular attention to disclosure items that have been a focus of comments in SEC reviews, such as performance target levels, the reasons companies are included in peer

groups for benchmarking and the rationale for differing levels of compensation for various named executive officers, including different benefits for named executive officers upon a termination of the executive's employment or a change of control of the company.

Companies may wish to craft their 2010 executive compensation disclosures with particular care to effectively communicate their executive compensation narrative to investors in anticipation of heightened scrutiny in the current economic and regulatory environment. For example, in its December 2009 release adopting the new proxy disclosure requirements, the SEC noted that the CD&A should contain an analysis of how risk management policies or practices affect compensation for named executive officers if such policies or practices were a material factor in the determination of the forms or terms of compensation awarded to named executive officers. Although it does not appear likely that any such legislation will be in place for the 2010 proxy season, bills have been introduced in Congress that would impose a requirement for an advisory shareholder vote on executive compensation ("say on pay") for all companies that are subject to the proxy rules. Companies participating in the Troubled Asset Relief Program (TARP) are already required to conduct annual say on pay votes and are subject to other executive compensation restrictions.

Companies should also note that the SEC staff has indicated that they believe that companies have now had sufficient time to adjust to the compensation disclosure changes the SEC adopted in 2006. In a November 2009 speech, Shelley Parratt, Deputy Director of the SEC's Division of Corporation Finance, stated that "after three years of futures comments, we expect companies and their advisors to understand our rules and apply them thoroughly. So, any company that waits until it receives staff comments to comply with the disclosure requirements should be prepared to amend its filings if it does not materially comply with the rules." Accordingly, rather than simply revising future disclosures, companies with proxy statements that are reviewed by the SEC in the 2010 proxy season may be required to amend their prior filings if the SEC staff concludes that they have not materially complied with the compensation-related disclosure requirements.

E. Tabular and Narrative Executive Compensation Disclosure

In addition to the CD&A, the executive compensation disclosure 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.

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-in-control.

The amendments to the disclosure requirements adopted by the SEC in December 2009 will significantly alter the treatment of equity awards in the Summary Compensation Table. This change will impact total compensation amounts and, accordingly, may alter the composition of the named executive officers. In the Stock Awards and Option Awards columns of the Summary Compensation Table, the aggregate grant date fair value of awards computed in accordance with Financial Accounting Standards Board (FASB) Accounting Standards Codification Topic 718, *Compensation – Stock Compensation* (ASC Topic 718)² replaces the dollar amount recognized for financial statement reporting purposes for the

2. For periods ending on or after September 15, 2009, ASC Topic 718 supersedes references to the previous standard, FASB Statement of Financial Accounting Standards No. 123 (revised 2004) *Share-Based Payment* (FAS 123R).

fiscal year in accordance with ASC Topic 718. The full grant date fair value of each equity award granted during the fiscal year will continue to be required to be reported in the Grants of Plan-Based Awards Table with the aggregate of such values appearing in the Summary Compensation Table. For awards subject to performance conditions, the grant date fair value reported both in the aggregate and for each award should be based on the probable outcome of the performance conditions, determined as of the grant date. This amount should be consistent with the estimated aggregate compensation cost to be recognized over the relevant service periods in accordance with ASC Topic 718, excluding the effect of estimated forfeitures. Footnotes will be required to disclose the maximum value of performance-based stock awards and option awards assuming the achievement of the highest level of performance. Amounts reflected in the Stock Awards, Option Awards and Total Compensation columns for prior fiscal years in the Summary Compensation Table must be recomputed in accordance with the new equity award reporting rules.

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.

The amendments to the disclosure requirements adopted by the SEC in December 2009 alter the presentation of equity awards in the Director Compensation Table in a manner similar to the way they alter the presentation of equity awards in the Summary Compensation Table as described above. The Stock Awards and Option Awards columns in the Director Compensation Table will now reflect the aggregate grant date fair value of awards made during the fiscal year, computed in accordance with ASC Topic 718, rather than the compensation expense recognized for the fiscal year for financial statement reporting purposes, with the full grant date fair value of each equity award granted during the fiscal year required to be reported in a footnote.

G. Disclosure of Compensation Policies and Practices that Present Material Risks

The disclosure requirements adopted by the SEC in December 2009 create a new Item 402(s) of Regulation S-K that requires companies to disclose compensation policies and practices for any employees, including employees who are not executive officers, if such compensation policies and practices create risks that are reasonably likely to have a material adverse effect on the company as a whole. The SEC has stated that it believes that this disclosure can assist shareholders in determining whether a company's compensation programs incentivize employees to take excessive or inappropriate risks. The "reasonably likely" standard is the same standard as that currently applicable to certain disclosure required to be included in Management Discussion and Analysis, which requires risk-oriented disclosure of known trends and uncertainties that are material to a company's business. The standard permits companies to consider compensating or offsetting steps or controls designed to limit risks of certain compensation arrangements. Although problems in the financial sector may have prompted the SEC to adopt this change, the concept of risk for purposes of this disclosure is broadly defined to encompass strategic and other long-term business risks as well as short-term risks such as those that may emanate from proprietary trading desks at financial institutions. Business units responsible for a disproportionate share of the company's risk profile, that have different compensation structures, higher compensation expenses or greater profitability than other business units or that have risk and reward structures that differ meaningfully from other units within the company could trigger disclosure under this new requirement. The SEC has stated that the rules do not require a company to make an affirmative statement that it has determined that the risks arising from its compensation policies and practices are not reasonably likely to have a material adverse effect on the company.

H. 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.

I. 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 Section 16 filings on a timely basis must only be disclosed once.

J. 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 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. If a committee charter is not available on the company's website, the company must include a copy of it as an appendix to the company's proxy statement at least once every three fiscal years.

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. As noted above, the amendments to the disclosure requirements adopted by the SEC in December 2009 revise Item 407(c) of Regulation S-K to require disclosure as to whether and how board nominating committees use diversity as a factor in selecting director candidates. Rather than providing a definition of diversity, the rules allow each company to determine its own diversity criteria. As examples, companies may view diversity broadly to include differences of viewpoint, professional experience, education, skill and other individual qualities and attributes that contribute to board heterogeneity, or they may focus on concepts such as race, gender and national origin. In addition, if a board or nominating committee has a policy with respect to the consideration of diversity in identifying director nominees, the new requirements mandate a discussion about how the policy is implemented and how the board or nominating committee assesses the effectiveness of the policy.

Item 7(d) of Schedule 14A and Item 407(d) of Regulation S-K require disclosures about the audit committee, including whether it contains a 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. This 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."

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 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.

The amendments to the disclosure requirements adopted by the SEC in December 2009 revise Item 407(e) of Regulation S-K to require additional disclosure regarding the fees paid to compensation consultants and their affiliates when they play any role in determining or recommending the amount or form of executive and director compensation and such compensation consultants or their affiliates also provide other non-executive compensation consulting services to the company or its affiliates. Specifically, the revised rules require a company whose compensation consultant was not independent to disclose the aggregate fees paid during the last fiscal year to the consultant or its affiliates for determining or recommending the amount or form of executive or director compensation and the aggregate fees paid for all additional services to the company and its affiliates. In addition, if fee disclosure is required and the consultant was engaged for executive or director compensation consulting services by the board of directors or compensation committee, the company must also disclose whether the decision to engage the consultant for additional services beyond executive and director compensation was made or recommended by management and whether the board or compensation committee has approved all additional non-executive consulting services provided by the consultant. The enhanced disclosure regarding compensation consultant fees will not be required if: (1) the fees for the non-executive consulting services did not exceed \$120,000 during the company's last fiscal year; (2) the compensation consultant's only involvement in

recommending the amount or form of executive or director compensation is in connection with broad-based plans, such as 401(k) plans or health insurance plans, that do not discriminate in favor of executive officers or directors of the company; or if the consultant's services are limited to providing information, such as surveys, that either is not customized for a particular company or that is customized based on parameters that are not developed by the consultant; or (3) the consultant works with management (whether for only executive compensation consulting services or for both executive compensation consulting and other non-executive consulting services) but the board of directors or compensation committee has its own independent consultant.

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.

The amendments to the disclosure requirements adopted by the SEC in December 2009 revise Item 7 of Schedule 14A and create a new Item 407(h) of Regulation S-K that requires a company to describe the board's leadership structure, including whether the same person serves as both chief executive officer and chairman of the board. If the same person serves as chief executive officer and chairman of the board, the company must also disclose whether it has a lead independent director and, if it does, describe his or her specific role in the leadership of the board. In addition, the company must indicate why it had determined that its leadership structure is appropriate given the characteristics and circumstances of the company and must disclose the extent of the board's role in risk oversight, such as how the board administers its oversight function and the effect that this has on the board's leadership structure.

K. 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
- 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.

L. 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.

M. 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(8) of the NYSE Listed Company Manual requires shareholder approval of all equity compensation plans and material revi-

sions 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.

NASD 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. 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 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 separately approve, disapprove or abstain with respect to each matter 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.³ 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 (1) 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, (2) having held these securities for at least one year and (3) 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.

3. 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 be permitted to exclude all proposals submitted by the proponent for any meeting held in the next two calendar years.
- 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 these 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 (1) 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 (2) 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 (1) less than 3% of the vote if proposed once within the preceding five calendar years; (2) less than 6% of the vote on its last submission to shareholders if proposed twice previously within the preceding five calendar years; or (3) 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 exclusion because such proposals transcend day-to-day business matters and raise policy issues that merit a shareholder vote.

In Staff Legal Bulletin 14E, which was issued on October 27, 2009, the SEC staff reversed a position that it had taken in 2005 in Staff Legal Bulletin No. 14C that shareholder proposals requesting a company or its board to perform a risk assessment may be excluded as relating to the company's ordinary business operations. In Staff Legal Bulletin 14E, the SEC staff noted that its previous position may have resulted in "the unwarranted exclusion of proposals that relate to the evaluation of risk but that focus on significant policy issues." Under its new position, the SEC staff will look through a shareholder proposal requesting a risk evaluation and will focus on the underlying subject matter of the proposal to determine

whether the proposal is excludable. Accordingly, if the SEC staff considers the subject of a requested risk evaluation to be a “significant policy issue,” a company will not be permitted to exclude the proposal on the grounds that it relates to ordinary business operations. In Staff Legal Bulletin 14E, the SEC staff also indicated that the substantive basis for exclusion for shareholder proposals that relate to a company’s ordinary business operations may not apply to (1) shareholder proposals addressing the adequacy of risk management and oversight and (2) shareholder proposals addressing chief executive officer succession planning, provided that the proposals do not seek to micro-manage the succession process.

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 of defect 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 (1) the company's arguments for excluding the proposal, including applicable precedents, (2) the proposal and the proponent's supporting statement and (3) 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 to receive requests for Rule 14a-8 no-action letters and related correspondence. The company should include copies of any correspondence it has exchanged with the proposal's proponent. 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. 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. A page on the SEC website, <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8-incoming.shtml>, tracks incoming no-action requests that the SEC has received since October 1, 2008 and posts the SEC staff responses to them. The SEC staff has indicated that, starting with the 2010 proxy season, it will make a greater effort than in the past to include a rationale for each position it takes in response to no-action requests regarding the exclusion of shareholder proposals rather than simply stating whether no-action relief is denied or granted.

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.

XII. Proxy Access

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.

Most recently, on June 10, 2009, the SEC released a proposed rule that would (1) generally require companies to include shareholder nominees for director in company proxy materials so long as the shareholder is not seeking to change the control of the company or gain more than a

limited number of seats on the board and (2) preclude companies from relying on the “election exclusion” to exclude from their proxy materials proposals to amend company governing documents regarding director nomination procedures or disclosures related to shareholder nominees. More specifically, under a proposed Rule 14a-11, a shareholder or group could seek to include director nominees in the company’s proxy materials as long as such nominating shareholder or group beneficially owned shares in the company for at least one year in an amount equal to at least (1) 1% of the company’s securities for large accelerated filers and registered investment companies with a public float of \$700 million or more; (2) 3% of the company’s securities for accelerated filers and registered investment companies with a public float of \$75 million or more but less than \$700 million; and (3) 5% of the company’s securities for non-accelerated filers and registered investment companies with a public float of less than \$75 million. The maximum number of nominees a company would be required to include in its proxy materials would be the greater of (1) one or (2) 25% of the board. A company with more than one eligible shareholder or group would be required to include up to the maximum number of permissible nominees on a first-come, first-served basis in the order in which it receives timely notification of nominations. The nominating shareholder or group would be required to submit to the company and file with the SEC a Schedule 14N, which would be subject to liability for false or misleading statements pursuant to Rule 14a-9 and which would be required to contain specified information, including:

- a representation that the nominee meets the objective criteria for independence from the company set forth in the applicable rules of a national securities exchange or national securities association (if the company is subject to such rules);
- a representation that neither the nominee nor the nominating shareholder or group has an agreement with the company regarding the nomination of the nominee;
- a statement that the nominating shareholder or each member of the nominating group intends to own the requisite amount of securities through the date of the shareholder meeting;
- disclosure regarding the nature and extent of the relationships between the nominating shareholder or group or the nominee and the company or any affiliate of the company (Rule 14a-11 would not require a nominee to be independent from the nominating shareholder or group); and
- other disclosures about the nominee and the nominating shareholder or group.

In addition, a Schedule 14N could include an optional statement, not to exceed 500 words, to appear in the company's proxy statement in support of the shareholder nominee(s). Another proposal by the SEC would amend Rule 14a-8(i)(8) so that, under certain circumstances, a company would be required to include in its proxy materials a shareholder proposal that would amend, or that would request an amendment to, the company's governing documents regarding nomination procedures or disclosures related to shareholder nominations, provided that the proposal does not conflict with proposed Rule 14a-11.

On October 2, 2009, the SEC indicated that it would not adopt rules related to federal proxy access prior to the 2010 proxy season but that it would continue to consider the issue. Accordingly, some form of proxy access may be effective for the 2011 proxy season. In December 2009, the SEC extended the comment period for its proposed proxy access rules to solicit additional input regarding the potential costs and benefits of the proposed rules and the possibility of permitting issuers to opt out of a federal proxy access regime and to allow issuers and their shareholders to determine what sort of proxy access model to adopt through private ordering.

Changes to the General Corporation Law of the State of Delaware that took effect in August 2009 allow proxy access through private ordering by permitting (but not requiring) Delaware companies to adopt bylaws providing for (1) shareholder access to a company's proxy statement for director nominations (Section 112) and (2) reimbursement of proxy solicitation expenses incurred by a nominating shareholder (Section 113).

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.

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 is considered to be furnished to, rather than filed with, the SEC.

II. Filing the 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 the 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. Section 203.01 requires certain additional actions from listed companies other than (1) companies subject to the U.S. proxy rules and (2) companies not subject to the U.S. proxy rules that provide audited financial statements to beneficial shareholders in a manner that is consistent with the physical or electronic delivery requirements applicable to annual reports set forth in

Rules 14a-3 and 14a-16 of the U.S. proxy rules. If a company relies on website posting to satisfy the delivery requirement and does not fall within these categories, it must accompany the website posting of its annual report 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 have may request a hard copy of the complete audited financial statements free of charge.

Although the 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 the NASDAQ at the time it is distributed to shareholders, the NASDAQ permits a company to meet the annual report distribution requirement by posting the annual report on its website, issuing a press release announcing the availability of the report and sending a hard copy of the report to any shareholder within a reasonable time following a request for a copy.

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 before the meeting but after the record date applicable to determining shareholders entitled to vote at the meeting is not a "shareholder of record" for purposes of the meeting and is therefore not entitled to vote at the meeting.

Effective August 1, 2009, Section 213 of the General Corporation Law of the State of Delaware, which relates to the setting of record dates, was amended to provide that a board of directors may fix one record date to determine the shareholders entitled to receive notice of a shareholder meeting, which record date may not be more than 60 nor less than 10 days before the date of such meeting, and a later record date, on or before the date of the meeting, to determine the shareholders entitled to vote at such meeting. If a board of directors sets a record date to determine the shareholders entitled to receive notice of a shareholder meeting,

that date will also serve as the record date for determining the shareholders entitled to vote at the meeting unless the board determines, at the time it sets the record date for notice, that a later date on or before the date of the meeting is to be the record date for determining shareholders entitled to vote at the meeting. Given the recency of this change to Delaware law, which was intended to provide Delaware companies with a tool to combat empty voting, it remains unclear how actually using separate record dates for notice and for voting would be logistically implemented or how the federal proxy rules would apply to this practice.

For a listed company, notice must also generally be given to the NYSE 10 days in advance of the record date applicable to determining shareholders entitled to notice of the meeting. 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. Delaware law generally requires that notice of a meeting of a Delaware corporation be sent to shareholders 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 on 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 in 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 restaurants 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 individuals who may attend the meeting 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. As countervailing considerations, 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 shareholders needed to establish a quorum may be set in the certificate of incorporation or bylaws of the corporation, but a quorum may not consist of shareholders or their proxy holders representing at 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 or their proxy holders constitutes a quorum. Note that, for these calculations, shareholders and proxy holders 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, where, unless the company has adopted majority voting for director elections, only a plurality of shares present and entitled to vote is typically required, and certain other matters such as mergers and charter amendments where a majority of the outstanding shares or a super-majority vote may be required. 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 the 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 for likely outcomes earlier. 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 collected in advance of the meeting, 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 next 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 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, a notice of the adjourned meeting must be given to record shareholders entitled to vote at the meeting. If, after the adjournment, a new record date for shareholders entitled to vote is fixed for the adjourned meeting, the board of directors must fix a new record date for notice of the adjourned meeting and give notice of the adjourned meeting to each shareholder of record entitled to vote at the adjourned meeting as of the record date for notice of the adjourned meeting. Temporary adjournments may give rise to a number of legal complications. If such an adjournment is necessary or tactically advisable, 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 total 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 or dates; 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.

In December 2009, the SEC adopted amendments that require companies to report the results of a shareholder vote on a Current Report on Form 8-K within four business days after the meeting rather than, as has previously been the case, 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). If final results are not available within four business days after the meeting, preliminary voting results must be reported at such time and an amended Form 8-K must be filed within four business days after the final results have been certified.

The SEC has indicated that, regardless of when a company's fiscal year ends, the company must file a Form 8-K to report the results of any annual or special meetings held on or after February 28, 2010. In light of this accelerated reporting requirement, companies may wish to update their disclosure controls and procedures and coordinate with the inspector of elections in advance of the meeting to confirm that tabulation of voting results will be completed in a timely manner. Failure to timely file a Form 8-K to report voting results will result in a loss of eligibility to use Form S-3. 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.

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 [_____] , 20[___]. 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 Appendix A. 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 or held during the past five years.¹ **[Item 7 of Schedule 14A, Items 401(a), (b) and (e) of Regulation S-K]**

Is the information contained in Appendix A accurate and complete?

Yes

No

If no, please make the appropriate corrections to Appendix A.

1. In its final rules released on December 16, 2009 related to proxy disclosure and solicitation enhancements (the “Final Rules”), the Securities and Exchange Commission (the “SEC”) amended Item 401(e)(2) of Regulation S-K to provide for disclosure of any other directorships held, including any other directorships held during the past five years.

- (g) On December 16, 2009, the SEC adopted rules that require the Company to disclose “the specific experience, qualifications, attributes or skills” that led to the conclusion that each director or director nominee should serve as a director. In this regard, other than as set forth in your biography which we have attached hereto as Appendix A for your convenience, please set forth below any particular area of your professional or academic background that you think would be relevant for the Nominating/Corporate Governance Committee to consider.² ***[Item 7 of Schedule 14A, Item 401(e) of Regulation S-K]***
- (h) During the past ten³ 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 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
- (i) During the past ten³ years: ***[Item 7 of Schedule 14A, Item 401(f) of Regulation S-K]***

-
2. Although we believe many issuers will include a similar question to address the Final Rules, we also believe that other issuers will address the Final Rules through discussions between the general counsel’s office and the chair of the nominating/corporate governance committee. Please note that, if material, this disclosure should cover more than the past five years, including information about the person’s particular areas of expertise or other relevant qualifications.
3. The Final Rules amended Item 401(f) of Regulation S-K to lengthen the time during which disclosure is required from five to ten years. For purposes of computing the ten-year period for Question 1(i), the date of a reportable event is deemed to be 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.
-
-

- (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 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 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

- (vi) Have you been the subject of, or a party to, any Federal or State judicial or administrative order, judgment, decree or finding, not subsequently reversed, suspended or vacated, relating to an alleged violation of (other than in connection with a settlement of a civil proceeding among private litigants):

(A) any Federal or State securities or commodities law or regulation; or

(B) any law or regulation respecting financial institutions or insurance companies including, but not limited to, a temporary or permanent injunction, order of disgorgement or restitution, civil money penalty or temporary or permanent cease-and-desist order, or removal or prohibition order; or

(C) any law or regulation prohibiting mail or wire fraud or fraud in connection with any business entity?⁴

Yes

No

- (vii) Have you been the subject of, or a party to, any sanction or order, not subsequently reversed, suspended or vacated, of any self-regulatory organization (as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, as amended), any registered entity (as defined in Section 1(a)(29) of the Commodity Exchange Act) or any equivalent exchange, association, entity or organization that has disciplinary authority over its members or persons associated with a member?

Yes

No

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

4. Pursuant to Instruction 5 to Paragraph (f) of Item 401, disclosure pursuant to this question is not required with respect to any settlement of a civil proceeding among private litigants.

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 Appendix B, 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. Appendix B 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 Appendix B accurate and complete?

Yes

No

If no, please make the appropriate corrections to Appendix B.

- (c) Have you pledged as security any shares of any class of equity securities that you beneficially own as set forth in Appendix B, including securities held in margin accounts?

Yes

No

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

3. **Compensation.** Appendix C 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 Appendix C accurate and complete?

Yes

No

If no, please make the appropriate corrections to Appendix C.

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:⁵

-
5. 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.

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 transaction⁶, 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?
[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 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 transaction⁸; (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. 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.
7. 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. With respect to mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and stepchildren and stepparents, such relatives are deemed to be: (1) only those persons who are currently related to the primary reporting person (e.g., a person who is divorced from a director's daughter would no longer be a son-in-law whose transactions must be reported); and (2) only those persons who are related by blood or step relationship to the primary reporting person or his spouse (e.g., the sister of a director's spouse is considered a sister-in-law for purposes of this question; the sister's husband, however, is not considered a brother-in-law for purposes of this question).
8. 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.

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:

8. **Section 16 Reporting Compliance.** Attached as Appendix D 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 Appendix D 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. *[Independence⁹*

- (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 officer¹⁰ 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 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

-
9. 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.
10. 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, as amended, 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 or 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.

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)]**

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:

- (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 three fiscal 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 5605(a)(2)(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 Members¹², accept any compensation from the Company or any parent or subsidiary of the Company in excess of \$120,000 (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)?¹³ **[NASDAQ 5605(a)(2)(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. Pursuant to NASDAQ Marketplace Rule IM-5605, the reference to marriage, in the context of the definition of Family Member under Rule 5605 (a)(2), is intended to capture relationships specified in the rule (e.g., parents, children and siblings) that arise as a result of marriage, such as “in-law” relationships.
 13. Please note that, pursuant to NASDAQ Marketplace Rule IM-5605, 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-officer¹⁴ 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 5605(a)(2)(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 5605 (a)(2)(D)]**

Yes

No

If yes, please briefly describe:

14. For purposes of this Question 10, as prescribed by NASDAQ Marketplace Rule IM-5605 and Rule 16a-1(f) under the Securities Exchange Act of 1934, as amended, 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 or 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 5605(a)(2)(E)**]

Yes

No

If yes, please briefly describe:

- (f) Are you, or are any of your Family Members, a current 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 5605(a)(2)(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 5605(a)(2)**]

Yes

No

If yes, please briefly describe:]

PART III – TO BE ANSWERED ONLY BY DIRECTORS WHO ARE MEMBERS OF OR NOMINEES FOR THE AUDIT COMMITTEE¹⁵

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?¹⁶ **[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:

15. 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.

16. 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.¹⁷ **[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: _____, 20[____]

Signature

Please type or print your name

17. 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:¹⁸ “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.

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.

18. Include this definition if NYSE-listed company.

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.

APPENDIX A

[Appendix A 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]¹⁹**
- 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, Appendix A 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 presently held, or held during the past five years, 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]**

19. 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.

APPENDIX B

[Appendix B 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 Appendix B, 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, Appendix B should also describe the nature and terms of any of the individual's rights to acquire beneficial ownership.]

APPENDIX C

[Appendix C 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;²⁰
- 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 director 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 or executive officer; 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 reported person. This total compensation will include essentially all items of annual compensation, including:

- all stock awards, specifically reporting the aggregate grant date fair value computed in accordance with FASB ASC Topic 718;

20. 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.

- all option awards, specifically reporting the aggregate grant date fair value computed in accordance with FASB ASC Topic 718; 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
- Nonqualified Deferred Compensation Table
- Pension Benefits Table
- Potential Payments upon Termination or Change-in-Control
- Director Compensation Table]

APPENDIX D

[Appendix D 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 & Officer questionnaires. Confirm that questionnaires reflect revised proxy disclosure requirements.
150-120 days	Take note of shareholder proposals received before the deadline (generally 120 days before date on which the previous year's proxy was mailed). Determine whether there are bases to challenge proposals on procedural or eligibility grounds (within 14 days of company's receipt of proposal) or through SEC no-action letter requests (at least 80 days prior to filing of definitive proxy statement).
	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 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. The 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 amounts of proxy materials needed. Rule 14a-13 requires completion at least 20 business days prior to the record date. The 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.
Within 4 business days after the meeting	Prepare and file Form 8-K to report voting results and, if desired, issue press release.
	File meeting minutes in corporate records.

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 Statements 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 included in the company’s Proxy Statement and, therefore, the shareholders have not had the opportunity to fully

consider the qualifications of the nominee. If you wish to nominate someone you must follow the rules for doing so and comply with the company's 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 included in the company's Proxy Statement and, therefore, the shareholders have not had the opportunity to fully consider the merits of the proposal. If you wish to make a proposal you must follow the rules for doing so and comply with the company's advance notice provisions in our bylaws. If you wish to include your proposal in next year's Proxy Statement, please timely submit it to the company.

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, indicate to security to 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 if you are not recognized, please refrain from speaking 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 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 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 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 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 material 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 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.]

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 this company or to 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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