

**NYSE BOARD OF DIRECTORS APPROVES
NEW CORPORATE GOVERNANCE AND
DISCLOSURE STANDARDS**

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On August 16, 2002, the New York Stock Exchange ("NYSE") publicly filed with the SEC its proposed new listing standards regarding corporate governance and disclosure (the "New Standards"). The New Standards, which the NYSE Board of Directors had approved on August 1, 2002, impose a number of important new measures on NYSE-listed companies, including the following:

- Independent directors must comprise a majority of the board of directors of listed companies (other than listed companies in which a shareholder or group of shareholders possesses voting control);
- Audit committees of listed companies must consist solely of independent directors, and, subject an exception for controlled companies, the same requirement is applicable to the nominating/corporate governance and compensation committees;
- For a director to be deemed "independent," the board of directors must affirmatively determine that the director has no material relationship with the listed company;
- Non-management directors of each listed company must meet at regularly scheduled executive sessions without management;
- All listed companies must adopt and publish an audit committee charter, and, subject to an exception for controlled companies, listed companies must also adopt and publish charters for the nominating/corporate governance and compensation committees;
- Listed companies must also adopt corporate governance guidelines as well as a code of business conduct and ethics, and must promptly disclose any waivers of the codes for directors or executive officers;
- Shareholders must be allowed to vote on all equity-based compensation plans, subject to limited exceptions;

- Each listed company's chief executive officer ("CEO") must certify annually that such CEO is not aware of any company violations of NYSE corporate governance listing standards; and
- Listed foreign private issuers must disclose any significant ways in which their corporate governance practices differ from NYSE rules, although these issuers are not otherwise subject to the new corporate governance standards discussed in this memorandum.

As the NYSE noted in its press release announcing its approval of the New Standards, the New Standards are aimed at "helping to restore investor confidence by empowering and ensuring the independence of directors and strengthening corporate-governance practices." The NYSE Board of Directors approved the New Standards following its review of the recommendations made by the NYSE's Corporate Accountability and Listing Standards Committee (the "Committee") and the receipt of comment letters from over 300 industry participants regarding those recommendations. As described in our memorandum dated June 11, 2002 (*Report of the New York Stock Exchange Corporate Accountability and Listings Standards Committee*), the Committee, which was formed in February at the request of SEC Chairman Harvey Pitt, delivered a comprehensive report (the "Report") on June 6, 2002 proposing extensive new listing standards. The New Standards approved by the NYSE Board of Directors are substantially the same as those proposed in the Report but reflect clarifications and modifications made to address some of the comments received, as well as legislative developments and further deliberations of the Committee. Some of the most meaningful clarifications and modifications made by the NYSE Board of Directors include the following:

- "Controlled" companies, in which more than 50% of the voting power is held by an individual, group or another company, are not required to have a majority of independent directors on their board or have nominating and compensation committees comprised of independent directors, but are only required to have an audit committee consisting of at least three persons and composed entirely of independent directors;
- Although the New Standards still suggest that share ownership is a relationship that can compromise independence, the NYSE Board of Directors responded to comments from buyout and venture funds by noting both that stock ownership is not necessarily a bar to an independence finding and that the NYSE's concern is independence from management;
- Although non-management directors must meet at regularly scheduled executive sessions without management, there need not be a presiding director at all of these sessions;
- Each listed company is required to have an internal audit function;
- Although stockholder approval is generally required for all equity-based compensation plans, exceptions have been provided for employment-

inducement options, option plans acquired through mergers, tax-qualified plans (*e.g.*, ESOPs and 401(k)s) and excess benefit plans under ERISA (*i.e.*, plans that are maintained solely to provide contributions and benefits in excess of the limits imposed by the tax code); and

- The NYSE Board of Directors removed the requirement that the CEO certify as to the accuracy and completeness of all information provided to investors in deference to similar provisions contained in the Sarbanes-Oxley Act of 2002 (the “Sarbanes-Oxley Act”).

The NYSE filed rules implementing the proposed New Standards with the Securities and Exchange Commission (the “SEC”) pursuant to the Securities and Exchange Act of 1934. The SEC may, after the applicable comment period, approve the proposed rules, approve modified rules or make additional proposals based on comments that it receives. Assuming the SEC-approval process proceeds expeditiously, as is currently anticipated, the New Standards would become effective prior to year-end. Once effective, the NYSE has set forth the following timetable for when listed companies must bring themselves into compliance with the New Standards.¹

Time Period Following Effectiveness Listed Companies Have To Become Compliant	Applicable Provision of the New Standards
Immediately	<p>Shareholder approval of equity-based compensation plans (and related prohibition on broker voting of uninstructed shares)</p> <p>NYSE ability to issue public reprimand letters</p>
6 Months	<p>Provide for executive sessions of non-management directors</p> <p>Establish nomination and compensation committees with requisite charters</p> <p>Adopt required audit committee charter and establish internal audit function</p> <p>Adopt corporate governance guidelines and code of business conduct and ethics</p> <p>Description of significant differences from NYSE standards required for foreign private issuers</p> <p>Certification of compliance with corporate governance listing standards required by CEO</p>
12 Months	<p>Each of the nominating and compensation committees must have at least one independent director</p>

¹ The New Standards apply to all companies listing common stock on the NYSE. In contrast, the Sarbanes-Oxley Act generally does not distinguish between issuers listing equity and debt securities.

Time Period Following Effectiveness Listed Companies Have To Become Compliant	Applicable Provision of the New Standards
24 Months	<p>Board of directors must consist of a majority of independent directors</p> <p>Each of the nominating and compensation committees must consist solely of independent directors</p> <p>New eligibility standards for audit committee members</p>

This memorandum summarizes the New Standards and discusses the status of the corporate governance reform proposals recently announced by The Nasdaq Stock Market, Inc. (“Nasdaq”). In many areas, the NYSE deferred to the Sarbanes-Oxley Act, which President Bush signed into law on July 30, 2002, and we have noted where appropriate in this memorandum those provisions of the Sarbanes-Oxley Act that are implicated by the New Standards. This memorandum then sets forth a recommended action-item list designed to assist NYSE-listed companies in becoming compliant with the New Standards. We have also attached examples of key committee charters required to be adopted (and made publicly available) pursuant to the New Standards.

SUMMARY OF THE NEW STANDARDS

These New Standards effect a wide variety of changes to the NYSE’s listing standards and are designed to empower the board of directors of a listed company to provide a greater check against management power by creating greater independence, increasing specialization within the board, giving shareholders more opportunity to monitor and participate in the governance of their companies and establishing new control and enforcement mechanisms. Outlined below is a summary of the New Standards’ requirements. A complete summary, prepared by the NYSE, of the actual differences between the New Standards and the current NYSE listing standards is set forth in Appendix A to this memorandum.

INCREASED ROLE AND AUTHORITY OF INDEPENDENT DIRECTORS

Independent Directors Must Comprise Majority of Listed Company’s Board. In order to increase the quality of board oversight and lessen the possibility of damaging conflicts of interest, the New Standards require that a majority of the board of directors of a listed company (other than a “controlled” company, as noted below) be comprised of “independent” directors. The New Standards stipulate that a listed company has a 24-month period within which it must achieve majority independence on its board of directors. In addition, the New Standards require a company to disclose publicly when it complies with this majority-independence requirement. The New Standards provide an exception, however, to the majority-independence requirement for those listed companies in which more than 50% of the voting power is held by an individual, a group or another company. If such a controlling shareholder were to pursue an

initial public offering of its subsidiary, such shareholder may wish to consider a high-vote/low-vote capital structure in order to ensure that it remains within this exception for controlled companies even as it sells down its post-IPO shareholdings below a 50% economic ownership interest. Although a “controlled” company need not comply with the majority-independence requirement, the “controlled” company is nonetheless required to have an audit committee consisting of at least three persons and composed solely of independent directors. The audit committee of a “controlled” company must also comply with the other audit committee requirements provided for in the New Standards.

Regular Meetings of Non-Management Directors. In order to provide greater and more frank review of management, the New Standards require that non-management directors meet without management at regularly scheduled executive sessions.² Contrary to the Committee’s recommendation made in the Report, the New Standards do not require listed companies to appoint a director who will lead these meetings. If listed companies choose to designate a lead director, however, the name of that director must be disclosed in the annual proxy statement. In the event that a board instead chooses to rotate directors who will lead the executive sessions, a listed company must disclose the procedure by which the presiding director will be selected for each executive session, along with a means for shareholders and employees to communicate with all non-management directors of the company.

Independence in Listed Company’s Audit, Nominating and Compensation Committees. Under the New Standards, all listed companies must have an audit committee composed solely of independent directors. Non-controlled companies must also have a nominating/corporate governance committee and a compensation committee comprised solely of independent directors.

TIGHTENED DEFINITION OF “INDEPENDENT DIRECTOR” AND ADDED AUDIT COMMITTEE QUALIFICATION REQUIREMENTS

New Criteria and Procedures for Assessing Independence. The New Standards set forth the following amended requirements regarding the criteria and procedures to which listed companies must adhere when determining whether a director is “independent”:

- **Affirmative board of directors’ determination of no material relationship.**
 - *No Material Relationship.* The New Standards provide that no director can qualify as “independent” unless and until the board of directors affirmatively determines that the director “has no material relationship

² “Non-management” directors are those who are not company officers, and includes such directors who are not independent by virtue of a material relationship, former status or family membership, or for any other reason.

with the listed company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company).”

The New Standards do not explicitly state what constitutes a “material relationship,” but instead state that a board of directors would make that determination “broadly considering all relevant facts and circumstances.” The New Standards further provide that in making determinations as to a director’s independence, the board of directors should consider the relationship both from the viewpoint of the director and also from the viewpoint of the persons or organizations with which the director is associated. Moreover, the New Standards note that material relationships can include, among others, commercial, industrial, banking, consulting, legal, accounting, charitable and familiar relationships.

Accordingly, *all* relationships, no matter how seemingly immaterial, should be disclosed to a board of directors in order to allow for a comprehensive determination as to a director’s independence. The basis for any board determination that a relationship is not material must be disclosed in the listed company’s annual proxy statement.

- *Ability To Adopt Categorical Standards.* The New Standards allow a board of directors to adopt and disclose categorical standards to assist it in determining director independence. For example, a board may disclose its determination that affiliation with a customer whose business accounts for less than a specified percentage of the listed company’s revenues is, as a category, immaterial for purposes of determining independence. When disclosing the categorical standards, a listed company may then, if applicable, make the general statement that the independent directors meet the standards set by the board without detailing the particular aspects of the immaterial relationships between individual directors and the company. Any independence determinations for a director who does not meet the categorical standards must be specifically explained in the disclosure.
- *Impact of Significant Share Ownership.* The NYSE does not view ownership of even a significant amount of stock, by itself, as a bar to an independence finding. In that connection, the NYSE stated that it adopted this approach because its concern is independence from management.
- **Certain relationships are a bar to a finding of independence.** The New Standards consider each of the following relationships a *per se* bar on a director being considered independent:

- Present employment by the listed company or former employment by the listed company within the previous five-year period (a director who serves as an interim Chairman or CEO may, however, be excluded from the definition of a “former employee” and thus be deemed independent immediately after his or her service as interim Chairman or CEO);
- Present affiliation with/employment by a (present or former) auditor of the company or affiliation with/employment by such an auditor within the previous five-year period;
- Employment by a company that has a compensation committee on which any executive officer of the listed company serves; and
- Immediate family members in any of the above categories.³

Employment of a family member in a non-officer position does not, however, preclude the listed company’s board of directors from determining that a director is independent.⁴

New Audit Committee Qualification Requirements. In addition to the above requirements for independence, the New Standards require a heightened degree of independence for membership on the company’s audit committee. For purposes of audit committee membership, the following additional requirements need to be met:

- **Director’s fees are the only compensation audit committee members may receive.** Permitted compensation includes normal compensation paid to directors as well as regular benefits that other directors receive, including equity-based awards. Due to the significantly greater time commitment of audit committee members, they may receive reasonable compensation greater than that paid to other directors. In addition, a director may receive a pension or similar compensation for past performance, provided that such compensation is not conditioned on continued or future service to the company.

³ An “immediate family member” includes a person’s spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than employees) who shares such a person’s home.

⁴ The term “officer” is defined to have the meaning specified in Rule 16a-1(f) of the Exchange Act, which, among other things, provides that an officer means the company’s president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice-president of the company in charge of a principal business unit, division or function, any other officer who performs a policy-making function or any other person who performs similar policy-making functions for the company. Rule 16a-1(f) also provides that officers of the company’s parent or subsidiaries shall be deemed officers of the company if they perform such policy-making functions for the company.

Disallowed compensation for an audit committee member includes fees paid directly or indirectly for services as a consultant or a legal or financial advisor, regardless of the amount.⁵ Disallowed compensation is not intended to include ordinary compensation paid in another customer or supplier or other business relationship that the listed company's board of directors has already determined to be immaterial for purposes of its basic independence analysis.

- **Financial expertise.** The Committee initially recommended that the audit committee chair must have accounting or related financial management expertise. The New Standards do not, however, reflect this recommendation due to the adoption of the Sarbanes-Oxley Act, which requires that at least one member of the audit committee, but not necessarily the chair, qualify as a "financial expert." Although the Sarbanes-Oxley Act leaves the definition of "financial expert" to SEC rulemaking, the Sarbanes-Oxley Act requires the SEC, in adopting a definition, to consider whether a person, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of a corporation, or from a position involving the performance of similar functions, has:
 - an understanding of generally accepted accounting principles and financial statements;
 - experience in the preparation or auditing of financial statements of generally comparable corporations and the application of those principles in connection with the accounting for estimates, accruals, and reserves;
 - experience with internal accounting controls; and
 - an understanding of audit committee functions.
- **Affiliation with listed company or its subsidiaries.** The Committee's initial recommendations had noted that owners of 20% or more of a company's common stock may not, even if they were otherwise found to be independent, chair or be a voting member of the audit committee. The NYSE Board of Directors, however, again deferred to the Sarbanes-Oxley Act and did not adopt this recommendation. Under the Sarbanes-Oxley Act, a member of an audit committee of an issuer may not, except in such director's capacity as a member of the board or any of its committees, be an "affiliated person" of the issuer or any of its subsidiaries.⁶ This

⁵ The Sarbanes-Oxley Act contains a similar provision which provides that in order for an audit committee member to be considered independent, such member may not accept *any* consulting, advisory or other compensation from the issuer.

⁶ The definition of "affiliated person" for purposes of the Sarbanes-Oxley Act is contained in Section 2(a) of the Investment Company Act, which provides that an "affiliated person" of another person is:

- any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person;

provision, when read together with the Sarbanes-Oxley Act's definition of "affiliated person", would seem to prevent directors who serve on a board of a company within an affiliated group from being on the audit committee of a separate listed company within that group. For example, a director serving on the board of a company that controls a listed company may not also serve on that listed company's audit committee, and, similarly, a director serving on a board of a subsidiary may not also serve on the audit committee of the listed parent of such subsidiary.

FOSTERING A FOCUS ON GOOD CORPORATE GOVERNANCE

Charters for Audit, Nominating/Corporate Governance and Compensation Committees. The New Standards require each listed company (other than a controlled company) to have a nominating/corporate governance committee and a compensation committee. Furthermore, each of these committees, as well as the audit committee, is required to have a written charter that must be publicly disclosed. These written charters must address the relevant committee's purposes and its goals and responsibilities. Each of these required charters must also provide for an annual performance evaluation of the relevant committee. Listed companies may allocate the responsibilities of the nominating/corporate governance and compensation committees summarized below to committees of their own choosing, provided that the committees are composed entirely of independent directors and adopt charters that are publicly disclosed.

We have attached to this memorandum model charters for each of these committees designed to satisfy the New Standards (as well as the requirements of the Sarbanes-Oxley Act).⁷

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- any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person;
 - any person directly or indirectly controlling, controlled by, or under common control with, such other person;
 - any officer, director, partner, copartner, or employee of such other person;
 - if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and
 - if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.

⁷ These models are for illustrative purposes, and listed companies will need to carefully tailor the model charters to fit their particular business and circumstances, including their corporate culture. The models incorporate provisions recommended by the NYSE (even though not required), as well as additional provisions that we believe issuers may wish to consider as a matter of good corporate practice. The models may need to be modified as a result of the SEC-approval process for the New Standards as well as the SEC-rulemaking process pursuant to the Sarbanes-Oxley Act. As summarized later in this memorandum, Nasdaq's new corporate governance principles are not yet publicly available and, accordingly, the model charters are not designed to be Nasdaq compliant.

The model charters meet the minimum requirements under the New Standards as well as the governance practices that, while not technically mandatory, are recommended by the NYSE.

- **Nominating/Corporate Governance Committee.**
 - *Purpose.* The New Standards require that the nominating/corporate governance committee's purpose must, at a minimum, be to: (i) identify individuals to be elected to the board; (ii) select, or recommend that the board select, the nominees for board membership at the next annual shareholder meeting; and (iii) develop corporate governance guidelines.⁸
 - *Goals and Responsibilities.* The New Standards require that the nominating/corporate governance committee's goals and responsibilities must, at a minimum, set forth: (i) the criteria for selecting new board members; and (ii) the committee's process for supervising the evaluation of the entire board and management.
- **Compensation Committee.**
 - *Purpose.* The New Standards require that the compensation committee's purpose must, at a minimum, be to: (i) set the CEO's compensation based on an evaluation in light of previously approved goals and objectives; and (ii) produce the required materials for inclusion in the company's annual proxy statement.
 - *Goals and Responsibilities.* The New Standards require that the compensation committee's goals and responsibilities must, at a minimum, provide for: (i) the development of compensation criteria for the CEO; (ii) the annual evaluation of the CEO's performance in light of that criteria; and (iii) the setting of the CEO's compensation based on such annual evaluation. In addition, the compensation committee must make recommendations to the board of directors with respect to equity- and incentive-based plans.
- **Audit Committee.**
 - *Purpose.* The New Standards require that the audit committee's purpose must, at a minimum, be to assist board oversight of: (i) the integrity of the company's financial statements; (ii) compliance with legal and regulatory requirements; (iii) the independent auditor's qualifications and

⁸ If a listed company is legally required by contract or otherwise to provide third parties with the ability to nominate directors (e.g., preferred stock rights to elect directors upon a dividend default, shareholder agreements and management agreements), the selection and nomination of such directors need not be subject to the nominating committee process.

independence; and (iv) performance of the internal audit function and the independent auditors. The audit committee's purpose must also include preparing the report that SEC rules require to be included in the company's annual proxy statement.

- *Duties and Responsibilities.* The duties and responsibilities of the audit committee must, at a minimum, be to:
 - ❑ Retain and terminate the company's independent auditors (subject, if applicable, to shareholder ratification);
 - ❑ Approve any "significant" non-audit relationship with the independent auditors and have exclusive authority to establish all fees for audit engagements and significant non-audit engagements);⁹
 - ❑ At least annually obtain and review an independent auditor's report describing the auditing firm's internal quality-control procedures and any material issues raised by the most recent internal quality-control review, or peer review, of the auditing firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years (and any steps taken to deal with any such issues);¹⁰
 - ❑ Discuss the annual audited financial and quarterly statements with management and the independent auditor;
 - ❑ Discuss earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies (this discussion may be general in nature (*i.e.*, discussion of the types of information to be disclosed and the type of presentation to be made) and need not take place in advance of each earnings release or each instance in which a listed company may provide earnings guidance);
 - ❑ As appropriate, obtain advice and assistance from outside legal, accounting or other advisors;

⁹ Similarly, the Sarbanes-Oxley Act provides that *all* audit services and permissible non-audit services (not just those services that are significant) provided to an issuer by its auditor be pre-approved by the issuer's audit committee. In contrast to the NYSE, however, the Sarbanes-Oxley Act banned a wide range of non-audit services, which are outlined in our memorandum regarding the Sarbanes-Oxley Act ("*Sarbanes-Oxley Act of 2002: CEO/CFO Certifications, Corporate Responsibility and Accounting Reform*").

¹⁰ The New Standards provide that, in addition to ensuring compliance with any legal requirements to rotate the lead audit partner, the audit committee should further consider whether there should be regular rotation of the audit firm itself. In comparison, the Sarbanes-Oxley Act provides for lead and reviewing partner rotation at least every five years.

- ❑ Discuss policies with respect to risk assessment and risk management;
- ❑ Meet separately, periodically, with management, internal auditors and the independent auditor;
- ❑ Review with the independent auditor any audit problems or difficulties and management’s response;
- ❑ Set clear hiring policies for employees or former employees of the independent auditors; and
- ❑ Report regularly to the full board of directors with respect to any issues raised by the foregoing.

As we have noted, certain provisions of the Sarbanes-Oxley Act have the effect of imposing additional duties and responsibilities on audit committees and their members. These provisions relate primarily to the areas of audit committee “independence” and qualifications, duties and responsibilities, limitations on non-audit services that can be provided by an independent auditor and the audit committee’s relationship with the independent auditor. As noted, the attached audit committee charter has incorporated the requirements imposed by the Sarbanes-Oxley Act.

Corporate Governance Guidelines and Code of Business Conduct and Ethics. Every listed company must adopt corporate governance guidelines and a code of business conduct and ethics. Although each listed company’s corporate governance guidelines and ethics code must be tailored to suit the company’s unique policies and culture, at a minimum, the subjects outlined in the below table should be addressed:

Subjects That Should Be Addressed in a Listed Company’s:

<i>Corporate Governance Guidelines</i>	<i>Code of Business Conduct and Ethics</i>
<ul style="list-style-type: none"> • Director qualification standards • Director responsibilities • Director access to management and, as necessary and appropriate, independent advisors • Director orientation and continuing education • Annual performance evaluation of the board or directors • Management succession 	<ul style="list-style-type: none"> • Conflicts of interest • Corporate opportunities • Compliance with laws, rules and regulations (including insider trading laws) • Encouraging the reporting of illegal or unethical behavior • Protection and proper use of company assets • Confidentiality • Fair dealing

The corporate governance guidelines and ethics code must be posted on the company’s website. In addition, any waiver of the code of ethics may only be made by the board or a

committee of the board, and in the case of a waiver for any director or executive officer, must be promptly disclosed to shareholders.¹¹

REQUIREMENTS INCREASING SHAREHOLDERS' ABILITY TO MONITOR AND PARTICIPATE IN COMPANY'S GOVERNANCE

Shareholder Approval of All Equity Compensation Plans. The New Standards require that shareholders be given the opportunity to vote on all equity compensation plans other than (i) employment-inducement options, (ii) option plans acquired through mergers, (iii) tax-qualified plans (e.g., ESOPs and 401(k)s) and (iv) excess benefit plans under ERISA (i.e., plans that are maintained solely to provide contributions and benefits in excess of the limits imposed by the tax code). Accordingly, the New Standards eliminate the NYSE shareholder approval exemption for broad-based equity compensation plans.¹² The request for shareholder approval extends to material revisions to the terms of equity compensation plans. In circumstances in which equity compensation plans are not subject to shareholder approval, the plans must be subject to the approval of the listed company's compensation committee.

The New Standards also provide that a broker may no longer vote a customer's shares on any equity compensation plan unless the broker has received that customer's instructions to do so (previously, brokers could vote by proxy those shares it held for the account of others if it did not receive voting instructions from the beneficial owner and was not aware of any matter contested at the meeting). The NYSE will establish a working group to advise it on the need for possible mechanisms to facilitate this new rule, although this recommendation will not delay the effectiveness of the new rule.

Foreign Private Issuers Disclosure of Differences. Although the New Standards continue to permit foreign private issuers to adhere to the corporate governance requirements

¹¹ In addition, the Sarbanes-Oxley Act requires the SEC to issue rules by January 26, 2003 requiring each issuer to disclose whether it has adopted a code of ethics for senior financial officers and, if not, the reason therefor. The Sarbanes-Oxley Act defines "code of ethics" to mean any standards that are reasonably necessary to promote:

- honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
- full, fair, accurate, timely and understandable disclosure in the issuer's periodic reports; and
- compliance with governmental rules and regulations.

The Sarbanes-Oxley Act similarly requires the SEC to amend its rules by January 26, 2003 to require the immediate disclosure (by means of filing a Current Report on Form 8-K, dissemination by the Internet or by other electronic means) by any issuer of any change in or waiver of its code of ethics for senior financial officers.

¹² Additionally, the New Standards expressly note that the NYSE's traditional "treasury share exception" is no longer available.

of their home country in lieu of certain NYSE standards, these issuers must now disclose any material differences between their corporate governance practices and applicable NYSE corporate governance listing standards. This disclosure need not be a detailed, item-by-item analysis of the deviations, but may instead be a brief, general summary of the material differences.

Listed foreign private issuers must provide this disclosure on their web site and/or in their annual report as distributed to shareholders in the U.S. If the disclosure is only made available on the web site, the issuer must so state in its annual report and provide the web site address where the information may be obtained.

NEW CONTROL AND ENFORCEMENT MECHANISMS

CEO Annual Certification. The CEO of each listed company is now required to certify annually to the NYSE that such CEO is not aware of any violation by the company of the NYSE corporate governance listing standards. This certification, as well as the CEO/CFO certifications required to be filed with the SEC regarding the quality of the listed company's public disclosure, must be disclosed in each listed company's annual report. In deference to the Sarbanes-Oxley Act and the SEC, the NYSE Board of Directors did not adopt the Committee's recommendation that the each listed company's CEO provide an annual certification regarding the accuracy and completeness of information provided by the company to investors.¹³ The timing of the filing of the CEO certification following the six-month transition period subsequent to the effective date of the New Standards has not been clearly established.

Public Reprimand. The New Standards permit the NYSE to issue a public reprimand letter to any listed company violating the new listing standards as a lesser sanction for violations and only to suspend trading in or to delist a company for repeated or flagrant violations of the standards.

STATUS AND SUMMARY OF NASDAQ RULE MODIFICATIONS

On July 25, 2002, The Nasdaq Stock Market, Inc. ("Nasdaq") announced that its Board of Directors approved new corporate governance reform proposals "designed to increase accountability and transparency for the benefit of investors." Based on Nasdaq's public

¹³ We have described the additional certification requirements imposed by the Sarbanes-Oxley Act in our July 31, 2002 memorandum, "*Sarbanes-Oxley Act of 2002: CEO/CFO Certifications, Corporate Responsibility and Accounting Reform*", as supplemented by our August 8, 2002 memorandum, "*Sarbanes-Oxley Act of 2002: Supplemental Memorandum No. 1*".

statements to date – the text of Nasdaq’s proposed rule changes has not yet been made publicly available – its proposed rule changes would include the following:

- Independent directors must comprise a majority of the board of directors;
- Executive officer compensation and director nominations must be approved by an independent compensation committee and nominating committee, respectively, or by a majority of all independent directors (one non-independent director would be permitted to serve on each of the compensation and nominating committees “under certain disclosed circumstances”);
- Continuing education for directors would be mandatory;
- Shareholders must be allowed to vote on all equity-based compensation plans, subject to limited exceptions;
- Listed companies must adopt and publish codes of conduct;
- Listed companies must disclose insider transactions in company stock within two business days for transactions exceeding \$100,000; and
- Listed foreign private issuers must (i) disclose exemptions to Nasdaq’s corporate governance requirements, at the time the exemption is received and on an annual basis thereafter, as well as any alternative measures taken in lieu of the waived requirements, and (ii) file with the SEC and Nasdaq semi-annual and interim reports, including a statement of operations and balance sheet.

A more complete summary of Nasdaq’s proposed rule changes, based on its public statements, and a comparison of its proposed new rules with the New Standards is contained in Appendix B to this memorandum.

Nasdaq anticipates publicly releasing the text of its proposed rule changes before the end of August, concurrently with its submission of the proposed rules to the SEC for its approval. As with the proposed NYSE rules, Nasdaq must file its proposed rule changes with the SEC and the SEC may, after the applicable comment period, approve the proposed rules or approve modified rules or make additional proposals based on the comments received.

**SUMMARY LIST FOR NYSE-LISTED
COMPANIES TO ACHIEVE COMPLIANCE
WITH NEW STANDARDS**

As highlighted above, listed companies must implement or otherwise take steps to comply with a substantial number of policies and procedures to comply with the New

Standards. Outlined below is a list of actions that we recommend NYSE-listed companies take (to the extent that companies have not already done so) to become compliant, a number of which may also be applicable to Nasdaq-listed companies.¹⁴

SATISFYING INDEPENDENCE REQUIREMENTS

1. *Determine State of Independence.* We recommend listed companies circulate a questionnaire to all current directors as promptly as practicable to assess these directors' independence under the New Standards. The same questionnaire should also be provided to any new candidate prior to such candidate's nomination for a directorship. Moreover, we suggest that companies adopt a policy that calls for the questionnaire to be circulated annually in advance of the company's proxy season to each director, regardless of whether the director is standing for re-election.

2. *Consider Adopting Categorical Standards of Independence.* The New Standards permit a board of directors to adopt categorical standards to assist it in determining director independence. By adopting categorical standards, a board of directors can more easily make its affirmative determinations as to director independence (also, as discussed in #5 below, a listed company can ease its disclosure burden as to these determinations).

3. *Satisfy Independence Requirements.* Within two years from the effective date of the New Standards:

- Non-controlled companies are required to have a majority of independent directors on their board of directors and audit, nominating and compensation committees composed solely of independent directors;¹⁵ and
- Controlled companies are required to have an audit committee consisting of at least three persons and composed solely of independent directors.

4. *Publicly Disclose Majority Independence.* The New Standards require listed companies to publicly disclose when they have achieved majority independence on their board of directors. We recommend making disclosure of this compliance by issuing a press release and/or filing a Current Report on Form 8-K with the SEC.

¹⁴ This list is in addition to any actions that NYSE-listed companies may need to take in order to comply with the Sarbanes-Oxley Act, as set forth in our July 31, 2002 memorandum, "*Sarbanes-Oxley Act of 2002: CEO/CFO Certifications, Corporate Responsibility and Accounting Reform*".

¹⁵ Within one year from the effective date, non-controlled companies must have at least one independent director on each of the nominating and compensation committees.

5. *Publicly Disclose Independence Determinations.* The New Standards impose varying requirements as to a board of director's independence determinations depending on the manner by which the board effects such determinations.

- *Company that has adopted categorical independence standards.* Should a listed company's board of directors adopt categorical standards to assist it in determining director independence, the company may disclose such standards and then make a general disclosure if a director meets these standards. Any independence determinations for a director who does not meet the categorical standards must be specifically explained in the disclosure.
- *Company that has not adopted categorical independence standards.* In the absence of categorical standards, a company must disclose its board's determinations as to the independence of its directors. In addition, in the event that a board of directors determines that a relationship a director has with the company is not material (and that the director therefore qualifies as "independent"), then the company must disclose the basis for assessing the relationship as not being material in its annual proxy statement.

EMPOWERING NON-MANAGEMENT DIRECTORS

6. *Schedule Sessions of Non-Management Directors.* Within six months from the effective date of the New Standards, listed companies must schedule regular sessions in which their non-management directors meet without management. We would recommend that such regularly scheduled sessions occur on at least a quarterly basis. These sessions may be held in conjunction with regularly scheduled board meetings.

7. *Establish and Disclose Procedure for Shareholders and Employees To Communicate with Non-Management Directors.* Listed companies do not have to appoint a lead director to preside at the meetings of non-management directors. If a company chooses to designate a director to preside at the regularly scheduled meetings of non-management directors, however, then it must publicly disclose the name of such director in the company's annual proxy statement. In any event, a listed company must disclose a method for shareholders to communicate directly with the presiding director or with the non-management directors as a group.

BOARD COMMITTEE AND GUIDELINE REQUIREMENTS

8. *Establish Nominating/Corporate Governance and Compensation Committees with NYSE-Compliant Charters.* To the extent a non-controlled listed company does not already have a nominating/corporate governance committee and a compensation committee, the board of directors should endeavor to establish them with NYSE-compliant charters (compliance is required within six months from the effective date of the New Standards). If a company already has established such committees, we recommend the committee promptly undertake a

review of its charter to ensure compliance with the New Standards and make any necessary changes to become compliant within six months from the effective date of the New Standards.¹⁶

9. *Review Audit Committee Charter for Compliance.* Listed companies' audit committees should commence a review of their charters as soon as practicable and make any amendments necessary to bring the charter into compliance with the New Standards (compliance is required within six months from the effective date of the New Standards).¹⁷

10. *Evaluate Any "Simultaneous Service" Situations with Audit Committee Members.* If any member of a listed company's audit committee simultaneously serves on the audit committee of more than three public companies, the New Standards require the listed company's board of directors to determine that such simultaneous service would not impair the ability of such member to effectively serve on the listed company's audit committee. This board determination must be disclosed in the company's annual proxy statement.

11. *Establish Corporate Governance Guidelines and a Code of Business Conduct and Ethics.* The New Standards require listed companies to have, within six months from the effective date of the New Standards, corporate governance guidelines and a code of business conduct and ethics, each of which must adhere to certain requirements set forth in the New Standards. Listed companies must either review their existing guidelines and code and make any appropriate changes or establish such guidelines and code in a form that complies with the New Standards. Notably, the corporate governance guidelines will have to provide for, among other things, director orientation and continuing education procedures, management succession and annual performance evaluations of the board of directors.

12. *Publicly Disclose Committee Charters, Corporate Governance Guidelines and Code of Business Conduct and Ethics.* The New Standards require each listed company to comply with the following disclosure requirements regarding its committee charters, corporate governance guidelines and code of business conduct and ethics:

- post on its website the charters of its most important board committees, which at a minimum include the nominating/corporate governance committee, compensation committee and audit committee;
- post on its website its corporate governance guidelines and code of business conduct and ethics; and

¹⁶ Companies may allocate the responsibilities of the nominating and compensation committees to committees of their own choosing, provided that the committees are composed entirely of independent directors and publicly disclose their charters.

¹⁷ As noted, the Sarbanes-Oxley Act also requires that the audit committee have at least one member who is a "financial expert" and charges the SEC with developing a definition for the term "financial expert" by January 27, 2003.

- state in its annual report that the committee charters, corporate governance guidelines and ethics code are available on the company's website, and that the information is available in print to any shareholder who requests it.

We further recommend that listed companies consider publicly disclosing by way of a press release and/or Current Report on Form 8-K when the foregoing information is available on its website.

OTHER REQUIREMENTS

13. *CEO Certification.* As previously noted, beginning six months from the effective date of the New Standards, the CEO of a listed company must make an annual certification to the NYSE that such CEO is not aware of any violation by the company of the NYSE listing standards. This certification, along with certifications filed with the SEC, must be disclosed in the company's annual report.

In connection with the NYSE certification, we recommend that, at a minimum, CEOs take the following actions:

- Review with the general counsel (or other appropriate officer) the procedures the company has in place to assess the company's compliance with the NYSE listing standards;
- Review with the general counsel (or other appropriate officer) the steps the company has taken to comply with the New Standards (taking the steps outlined above should provide some comfort that the company has taken appropriate steps to become compliant); and
- Assess the adequacy of these company procedures and ensure that they have been and are being properly executed.

The timing of the filing of the CEO certification following the six-month transition period subsequent to the effective date of the New Standards has not been clearly established

14. *Foreign Issuers.* Listed companies that are foreign private issuers should undergo a review as soon as practicable to assess the differences between their home country requirements and the New Standards (compliance is required within six months from the effective date of the New Standards). Foreign issuers must disclose such differences on their web site and/or in their annual report as distributed to U.S. shareholders. If the foreign issuer chooses to only disclose the differences on its web site, it must so state in its annual report and provide the web site address.

15. *Evaluate Current Equity-Compensation Plans.* The New Standards adopted with respect to stockholder approval of equity-based compensation plans do not expressly grandfather those plans that have not been previously approved by shareholders. Absent further guidance from the NYSE, the language of the rule is therefore problematic in terms of

providing compensation (e.g., option grants) under any plan that has not been approved by shareholders. This issue may be addressed during the public comment period.

16. *Establish Internal Audit Function.* Within six months of the effective date of the New Standards, a listed company must have in place an internal audit function. This requirement does not necessarily mean that a company must establish a separate internal audit department or dedicate employees to the task on a full-time basis—it is enough for a company to have in place an appropriate control process for reviewing and approving its internal transactions and accounting. Also, a company may choose to outsource this function to a firm other than its independent auditor.

The foregoing list of procedures is not exhaustive. We understand that every company has unique issues regarding its board of directors and corporate governance practices. We encourage you to call us for individualized consultation regarding bringing your company into compliance with the New Standards.

* * * *

Please contact your relationship partner or any of the attorneys listed on the next page if we can be of assistance regarding these important developments.

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APPENDIX A



NYSE Committee Recommendation

Current Rule(s)

<p>Independent directors must comprise a majority of a board. Companies must have a nominating committee, compensation committee (or committees of the company's own denomination with the same responsibilities) and an audit committee, each comprised solely of independent directors. Controlled companies are exempt but must have a minimum three-person audit committee composed entirely of independent directors.</p>	<p>Listed companies must have a minimum three-person audit committee composed solely independent directors. No requirement for establishment or composition of nominating or compensation committees.</p>
<p>Non-management directors must meet without management in regular executive sessions.</p>	<p>No such requirement.</p>
<p>For a director to be deemed "independent," the board must affirmatively determine the director has no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company).</p>	<p>Existing definition precludes any relationship with the company that may interfere with the exercise of director's independence from management and the company.</p>
<p>Independence also requires a five-year "cooling-off" period for former employees of the listed company, or of its independent auditor; for former employees of any company whose compensation committee includes an officer of the listed company; and for immediate family members of the above.</p>	<p>Cooling-off period is three years and references only former employees of the company. Board of directors can make an exception for one former officer, provided the reason is explained in the next proxy statement.</p>
<p>Each listed company must have an internal audit function.</p>	<p>No current requirement</p>

Director's compensation must be the sole remuneration from the listed company for audit committee members.	No current requirement.
Listed companies must adopt a code of business conduct and ethics, and must promptly disclose any waivers of the code for directors or executive officers.	No current requirements.
Shareholders must be given the opportunity to vote on all stock-option plans, except employment-inducement options, option plans acquired through mergers, tax-qualified plans such as ESOPs and 401(k) and excess benefit plans. Brokers may only vote customer shares on proposals for such plans pursuant to customer instructions.	Shareholder approval required of stock-option plans in which officers or directors may participate, but broad-based plans and one-time employment inducements are exempt. Brokers can vote customer shares without instructions as long as the proposal is not contested and the proposal does not cover more than 5 percent of outstanding stock.
Listed companies must publish codes of business conduct and ethics, and key committee charters. Waivers for directors or executive officers must be promptly disclosed.	No current requirements.
Listed foreign private issuers must disclose any significant ways in which their corporate governance practices differ from NYSE rules.	No current requirements.
Each listed-company's CEO must certify annually that he or she is not aware of any violation by the company of NYSE corporate governance standards.	No current requirements.
The NYSE may issue a public reprimand letter for violation of a corporate governance standards, in addition to the existing penalty of delisting.	No current provision for a public reprimand.
The NYSE urges every listed company to establish an orientation program for new board members.	No such recommendation has been made previously.
In conjunction with leading authorities in corporate governance, the NYSE will develop a Directors Institute.	NYSE has generally supported education initiatives, but this will be the first formalized program designed for directors.

APPENDIX B

COMPARISON OF NYSE AND NASDAQ CORPORATE GOVERNANCE PROPOSALS

	NYSE	NASDAQ
Majority of independent directors for non-controlled companies	Required	Required
Definition of "independent" director	<p>Board must affirmatively determine that director has no material relationship with the listed company (either directly or as partner, shareholder or officer of an organization that has a relationship with the company)</p> <p>Required 5-year "cooling-off" period for (i) former employees of the company or its independent auditor; (ii) former employees of any other company whose compensation committee includes an executive officer of the listed company; and (iii) for immediate family members in any of the foregoing categories</p>	<p>No such affirmative determination required</p> <p>Required 3-year "cooling-off" period for directors who are not independent due to (i) interlocking compensation committees; (ii) the receipt by the director of a family member of the director of any payments in excess of \$60,000 other than for board service; or (iii) having worked on the company's audit engagement</p>
Additional requirements for audit committee membership	Director's fees must be the sole compensation an audit committee member receives from the listed company	Not required
Mandated non-management director executive sessions	Required	Required

	NYSE	NASDAQ
Nominating/corporate governance committee	Required (all independent directors) except in cases of controlled companies	All director nominations must be approved by an independent nominations committee or by a majority of the independent directors. Allow one non-independent director to serve on the committee under certain disclosed circumstances
Compensation committee	Required (all independent directors) except in cases of controlled companies	Executive officer compensation must be approved by an independent compensation committee or by a majority of the independent directors (CEO may be present for approval of other executive officer compensation). Allow one non-independent director to serve on the committee under certain disclosed circumstances
Equity-compensation plans	Shareholders must be given the opportunity to vote on all stock-option plans, except employment-inducement options, option plans acquired through mergers, tax-qualified plans such as ESOPs and 401(k) and excess benefit plans. Brokers may only vote customer shares on proposals for such plans pursuant to customer instructions.	Shareholders must approve all stock option plans. Exemptions for ESOPs, inducement options (must be approved by compensation committee or majority of independent directors) and option plans acquired through mergers
Adopt and disclose corporate governance guidelines	Required	Not required
Adopt code of business conduct and ethics and promptly disclose any waivers for directors or	Required	Required

	NYSE	NASDAQ
executives		
Annual CEO certification with respect to compliance with corporate governance listing standards	Required	Not required
Director orientation and continuing education	Encouraging orientation program for new directors. Developing a Directors Institute, unclear if attendance will be mandatory or if "continuing education" requirements will be imposed	Required continuing education for all directors, pursuant to rules to be developed by the Nasdaq Listing and Hearing Review Council
Approval of related-party transactions by audit committee or comparable body	Not required	Audit committee or comparable body is required to approve all related-party transactions

*This form is for illustrative purposes only.
Each issuer should modify this form to fit its business or particular circumstances, including its
corporate culture.¹*

AUDIT COMMITTEE OF THE BOARD OF DIRECTORS

CHARTER²

I. PURPOSE

The Audit Committee (the "Committee") shall:³

A. Provide assistance to the Board of Directors in fulfilling its responsibility to the shareholders, potential shareholders and investment community with respect to its oversight of:

- (i) The quality and integrity of the corporation's financial statements;**
- (ii) The corporation's compliance with legal and regulatory requirements;**

¹ Items in bold represent material specifically required to be included in this Charter pursuant to the new NYSE governance listing standards as well as those governance practices that, while not technically mandatory, are recommended by the NYSE (the items not technically mandatory are indicated by asterisks (*)). Items in italics are required by the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act").

This model also includes additional duties and responsibilities that we believe issuers may wish to consider as a matter of good corporate governance. Issuers should carefully evaluate, however, whether these duties and responsibilities should be conferred upon the Committee. The Committee should, of course, only be delegated those additional duties and responsibilities that it is prepared to carry out fully.

Except as otherwise provided by law, the corporation's certificate of incorporation or bylaws, or this Charter, the Committee, like other committees of the Board, is subject to the overall authority of the Board. See PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS § 3.02 (American Law Inst. 1994).

² The former NYSE standards required that the Board of Directors adopt and approve the corporation's audit committee charter. The new NYSE standards do not explicitly retain this requirement.

³ The former NYSE standards required that the Board of Directors adopt and approve the corporation's audit committee charter. The new NYSE standards do not explicitly retain this requirement.

- (iii) The independent auditor's qualifications and independence; and
- (iv) The performance of the corporation's internal audit function and independent auditors.

B. Prepare the report that SEC rules require be included in the corporation's annual proxy statement.

II. STRUCTURE AND OPERATIONS

Composition and Qualifications

The Committee shall be comprised of **[three or more]** members of the Board of Directors, **each of whom is determined by the Board of Directors to be "independent" under the rules of the New York Stock Exchange, Inc. and the Sarbanes-Oxley Act.**⁴ **No member of**

⁴ Under the new NYSE standards, in addition to the basic independence requirements applicable to all independent directors, members of the Committee may only receive normal directors' fees (including equity-based awards), which includes normal compensation paid to directors as well as regular benefits that other directors receive. They may, however, receive reasonable compensation greater than that paid to other directors because of the significantly greater time commitment of audit committee members. Pursuant to the new NYSE standards, disallowed compensation for a Committee member includes fees paid directly or indirectly for services as a consultant or a legal or financial advisor, regardless of the amount. Disallowed compensation is not intended to include ordinary compensation paid to another customer or supplier or other business relationship that the corporation's board has already determined to be immaterial for purposes of its basic independence analysis.

Under the Sarbanes-Oxley Act of 2002, an "independent" director is one that, except in his or her capacity as a member of the audit committee, another Board committee or the Board: (i) does not accept any consulting, advisory or other compensation from the company; and (ii) is not an "affiliated person" of the corporation or its subsidiaries. The definition of "affiliated person" for purposes of the Sarbanes-Oxley Act is contained in Section 2(a) of the Investment Company Act, which provides that an "affiliated person" of another person is:

- any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person;
- any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person;
- any person directly or indirectly controlling, controlled by, or under common control with, such other person;
- any officer, director, partner, copartner, or employee of such other person;
- if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and
- if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.

the Committee may serve on the audit committee of more than three public companies, including the corporation, unless the Board of Directors (i) determines that such simultaneous service would not impair the ability of such member to effectively serve on the Committee and (ii) discloses such determination in the annual proxy statement.

All members of the Committee shall have a working familiarity with basic finance and accounting practices (or acquire such familiarity within a reasonable period after his or her appointment) and at least one member must be a “financial expert” under the requirements of the Sarbanes-Oxley Act.⁵ Committee members may enhance their familiarity with finance and accounting by participating in educational programs conducted by the corporation or by an outside consultant.

No member of the Committee shall receive compensation other than (i) director’s fees for service as a director of the corporation, including reasonable compensation for serving on the Committee and regular benefits that other directors receive and (ii) a pension or similar compensation for past performance, provided that such compensation is not conditioned on continued or future service to the corporation.

Appointment and Removal

The members of the Committee shall be appointed by the Board of Directors and shall serve until such member’s successor is duly elected and qualified or until such member’s earlier resignation or removal. The members of the Committee may be removed, with or without cause, by a majority vote of the Board of Directors.

Chairman

Unless a Chairman is elected by the full Board of Directors, the members of the Committee shall designate a Chairman by the majority vote of the full Committee membership. The Chairman shall be entitled to cast a vote to resolve any ties. The Chairman will chair all regular sessions of the Committee and set the agendas for Committee meetings.

⁵ The Sarbanes-Oxley Act charges the SEC with adopting rules requiring disclosure of whether a corporation’s Audit Committee has at least one member who is a “financial expert” and with developing a definition for the term “financial expert” by January 27, 2003. In defining the term, the Act requires the SEC to consider whether a person, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of a corporation, or from a position involving the performance of similar functions, has: (i) an understanding of generally accepted accounting principles and financial statements; (ii) experience in the preparation or auditing of financial statements of generally comparable corporations and the application of those principles in connection with the accounting for estimates, accruals, and reserves; (iii) experience with internal accounting controls; and (iv) an understanding of audit committee functions.

III. MEETINGS

The Committee shall meet at least quarterly, or more frequently as circumstances dictate. As part of its goal to foster open communication, **the Committee shall periodically meet separately with each of management, the director of the internal auditing department and the independent auditors** to discuss any matters that the Committee or each of these groups believe would be appropriate to discuss privately. **In addition, the Committee should meet with the independent auditors and management quarterly to review the corporation's financial statements** in a manner consistent with that outlined in Section IV of this Charter. The Chairman of the Board or any member of the Committee may call meetings of the Committee. All meetings of the Committee may be held telephonically.

All non-management directors that are not members of the Committee may attend meetings of the Committee but may not vote. Additionally, the Committee may invite to its meetings any director, management of the corporation and such other persons as it deems appropriate in order to carry out its responsibilities. The Committee may also *exclude* from its meetings any persons it deems appropriate in order to carry out its responsibilities.

IV. RESPONSIBILITIES AND DUTIES

The following functions shall be the common recurring activities of the Committee in carrying out its responsibilities outlined in Section I of this Charter. These functions should serve as a guide with the understanding that the Committee may carry out additional functions and adopt additional policies and procedures as may be appropriate in light of changing business, legislative, regulatory, legal or other conditions. The Committee shall also carry out any other responsibilities and duties delegated to it by the Board of Directors from time to time related to the purposes of the Committee outlined in Section I of this Charter.

The Committee, in discharging its oversight role, is empowered to study or investigate any matter of interest or concern that the Committee deems appropriate. In this regard, **the Committee shall have the authority to retain outside legal, accounting or other advisors for this purpose**, including the authority to approve the fees payable to such advisors and any other terms of retention.

The Committee shall be given full access to the corporation's internal audit group, Board of Directors, corporate executives and independent accountants as necessary to carry out these responsibilities. While acting within the scope of its stated purpose, the Committee shall have all the authority of the Board of Directors.

Notwithstanding the foregoing, the Committee is not responsible for certifying the corporation's financial statements or guaranteeing the auditor's report. The fundamental responsibility for the corporation's financial statements and disclosures rests with management and the independent auditors.

Documents/Reports Review

1. **Review with management and the independent auditors prior to public dissemination the corporation's annual audited financial statements and quarterly financial statements, including the corporation's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations" and a discussion with the independent auditors of the matters required to be discussed by Statement of Auditing Standards No. 61.**
2. **Review and discuss with management and the independent auditors the corporation's earnings press releases (paying particular attention to the use of any "pro forma" or "adjusted" non-GAAP information), as well as financial information and earnings guidance provided to analysts and rating agencies. The Committee's discussion in this regard may be general in nature (i.e., discussion of the types of information to be disclosed and the type of presentation to be made) and need not take place in advance of each earnings release or each instance in which the corporation may provide earnings guidance.**
3. Perform any functions required to be performed by it or otherwise appropriate under applicable law, rules or regulations, the corporation's by-laws and the resolutions or other directives of the Board, including review of any certification required to be reviewed in accordance with applicable law or regulations of the SEC.

Independent Auditors

4. **Retain and terminate independent auditors and approve all audit engagement fees and terms.⁶**
5. *Inform each registered public accounting firm performing work for the corporation that such firm shall report directly to the Committee.*
6. *Oversee the work of any registered public accounting firm employed by the corporation, including the resolution of any disagreement between management and the auditor regarding financial reporting, for the purpose of preparing or issuing an audit report or related work.⁷*

⁶ The NYSE has indicated that this responsibility be within the sole authority of the Committee, subject to shareholder approval pursuant to applicable law or the corporation's Certificate of Incorporation or Bylaws.

⁷ The Sarbanes-Oxley Act notes that the Committee must be "directly responsible" for this item.

7. **Approve in advance any significant audit or non-audit engagement or relationship between the corporation and the independent auditors, other than “prohibited non-auditing services”.**⁸

The following shall be “prohibited non-auditing services”: (i) bookkeeping or other services related to the accounting records or financial statements of the audit client; (ii) financial information systems design and implementation; (iii) appraisal or valuation services, providing fairness opinions or preparing contribution-in-kind reports; (iv) actuarial services; (v) internal audit outsourcing services; (vi) management functions or human resources; (vii) broker or dealer, investment adviser or investment banking services; (viii) legal services and expert services unrelated to the audit; and (ix) any other service that the Public Company Accounting Oversight Board prohibits through regulation.

*Notwithstanding the foregoing, pre-approval is not necessary for minor audit services if: (i) the aggregate amount of all such non-audit services provided to the corporation constitutes not more than five percent of the total amount of revenues paid by the corporation to its auditor during the fiscal year in which the non-audit services are provided; (ii) such services were not recognized by the corporation at the time of the engagement to be non-audit services; and (iii) such services are promptly brought to the attention of the Committee and approved prior to the completion of the audit by the Committee or by one or more members of the Committee who are members of the Board to whom authority to grant such approvals has been delegated by the Committee. The Committee may delegate to one or more of its members the authority to approve in advance all significant audit or non-audit services to be provided by the independent auditors so long as it is presented to the full Committee at a later time.*⁹

8. Review, at least annually, the qualifications, performance and independence of the independent auditors. In conducting its review and evaluation, the Committee should:

(a) Obtain and review a report by the corporation’s independent auditor describing: (i) the auditing firm’s internal quality-control procedures; (ii) any material issues raised by the most recent internal quality-control review, or peer review, of the auditing firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the auditing firm, and any steps taken to deal with any such issues; and (iii) to assess the auditor’s independence, all relationships between the independent auditor and the corporation;

⁸ The NYSE has indicated that this responsibility be within the sole authority of the Committee.

⁹ The Sarbanes-Oxley Act specifically authorizes this delegation of power. The new NYSE standards are silent on the issue

(b) *Ensure the rotation of the lead audit partner at least every five years, ***and consider whether there should be regular rotation of the audit firm itself.****

(c) *Confirm with any independent auditor retained to provide audit services for any fiscal year that the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has not performed audit services for the corporation in each of the five previous fiscal years of that corporation.*

(d) ***Take into account the opinions of management and the corporation's internal auditors (or other personnel responsible for the internal audit function).***

Financial Reporting Process

9. In consultation with the independent auditors, management and the internal auditors, review the integrity of the corporation's financial reporting processes, both internal and external. *In that connection, the Committee should obtain and discuss with management and the independent auditor reports from management and the independent auditor regarding: (i) all critical accounting policies and practices to be used by the corporation; (ii) analyses prepared by management and/or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including all alternative treatments of financial information within generally accepted accounting principles that have been discussed with the corporation's management, the ramifications of the use of the alternative disclosures and treatments, and the treatment preferred by the independent auditor; (iii) major issues regarding accounting principles and financial statement presentations, including any significant changes in the corporation's selection or application of accounting principles; (iv) major issues as to the adequacy of the corporation's internal controls and any specific audit steps adopted in light of material control deficiencies; and (v) any other material written communications between the independent auditor and the corporation's management.*
10. **Review periodically the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of the corporation.**
11. **Review with the independent auditor (i) any audit problems or other difficulties encountered by the auditor in the course of the audit process, including any restrictions on the scope of the independent auditor's activities or on access to requested information, and any significant disagreements with management and (ii) management's responses to such matters. Without excluding other possibilities, the Committee may wish to review with the independent auditor (i) any accounting adjustments that were noted or proposed by the auditor but were "passed" (as immaterial or otherwise), (ii) any communications between the audit team and the audit firm's national office respecting auditing or accounting issues presented by the engagement and (iii) any "management" or "internal control" letter issued, or proposed to be issued, by the independent auditor to the corporation.**

12. ***Review and discuss with the independent auditor the responsibilities, budget and staffing of the corporation's internal audit function.***

Legal Compliance / General

13. Review periodically, with the corporation's counsel, any legal matter that could have a significant impact on the corporation's financial statements.
14. **Discuss with management and the independent auditors the corporation's guidelines and policies with respect to risk assessment and risk management. *The Committee should discuss the corporation's major financial risk exposures and the steps management has taken to monitor and control such exposures.***
15. **Set clear hiring policies for employees or former employees of the independent auditors.** *At a minimum, these policies should provide that any registered public accounting firm may not provide audit services to the corporation if the CEO, controller, CFO, chief accounting officer or any person serving in an equivalent capacity for the corporation was employed by the registered public accounting firm and participated in the audit of the corporation within one year of the initiation of the current audit.¹⁰*
16. *Establish procedures for: (i) the receipt, retention and treatment of complaints received by the corporation regarding accounting, internal accounting controls, or auditing matters; and (ii) the confidential, anonymous submission by employees of the corporation of concerns regarding questionable accounting or auditing matters.*

Reports

17. **Prepare all reports required to be included in the corporation's proxy statement, pursuant to and in accordance with applicable rules and regulations of the SEC.**
18. **Report regularly to the full Board of Directors including:**
 - (i) **with respect to any issues that arise with respect to the quality or integrity of the corporation's financial statements, the corporation's compliance with legal or regulatory requirements, the performance and independence of the corporation's independent auditors or the performance of the internal audit function;**
 - (ii) following all meetings of the Committee; and

¹⁰ Issuers should consider imposing a greater gap in time between departure from the independent auditor and hiring by the corporation and applying such requirement to a wider range of personnel.

- (iii) with respect to such other matters as are relevant to the Committee's discharge of its responsibilities.

The Committee shall provide such recommendations as the Committee may deem appropriate. The report to the Board of Directors may take the form of an oral report by the Chairman or any other member of the Committee designated by the Committee to make such report.

- 19. Maintain minutes or other records of meetings and activities of the Committee.

V. ANNUAL PERFORMANCE EVALUATION

The Committee shall perform a review and evaluation, at least annually, of the performance of the Committee and its members, including by reviewing the compliance of the Committee with this Charter. In addition, the Committee shall review and reassess, at least annually, the adequacy of this Charter and recommend to the Board of Directors any improvements to this Charter that the Committee considers necessary or valuable.¹¹ The Committee shall conduct such evaluations and reviews in such manner as it deems appropriate.

- ¹¹ The former NYSE standards expressly required that the audit committee review and reassess, at least annually, the adequacy of its charter. The new NYSE standards do not explicitly address this matter.

*This form is for illustrative purposes only.
Each issuer should modify this form to fit its business or particular circumstances, including its
corporate culture.¹*

**NOMINATING/CORPORATE GOVERNANCE
COMMITTEE OF THE BOARD OF DIRECTORS
CHARTER**

I. PURPOSE

The Nominating/Corporate Governance Committee (the "Committee") shall provide assistance to the Board of Directors in fulfilling its responsibility to the shareholders, potential shareholders and investment community by:²

- A. Identifying individuals qualified to become directors and selecting, or recommending that the Board of Directors select, the candidates for all directorships to be filled by the Board of Directors or by the shareholders;**
- B. Developing and recommending to the Board of Directors a set of corporate governance principles applicable to the corporation; and**

¹ Items in bold represent material specifically required to be included in this Charter pursuant to the new NYSE governance listing standards as well as those governance practices that, while not technically mandatory, are strongly recommended by the NYSE (the items not technically mandatory are indicated by asterisks (*)).

This model also includes additional duties and responsibilities that we believe issuers may wish to consider as a matter of good corporate governance. Issuers should carefully evaluate, however, whether these duties and responsibilities should be conferred upon the Committee. The Committee should, of course, only be delegated those additional duties and responsibilities that it is prepared to carry out fully.

Except as otherwise provided by law, the corporation's certificate of incorporation or bylaws, or this Charter, the Committee, like other committees of the Board, is subject to the overall authority of the Board. See PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS § 3.02 (American Law Inst. 1994).

² The NYSE has indicated that these items reflect the minimum requirements under the new listing standards although issuers may wish to broaden the purposes of the Committee as they consider appropriate.

- C. Otherwise taking a leadership role in shaping the corporate governance of the corporation.

II. STRUCTURE AND OPERATIONS

Composition and Qualifications

The Committee shall be comprised of [three or more] members of the Board of Directors, **each of whom is determined by the Board of Directors to be “independent” in accordance with the rules of the New York Stock Exchange, Inc.**

Appointment and Removal

The members of the Committee shall be appointed by the Board of Directors and shall serve until such member’s successor is duly elected and qualified or until such member’s earlier resignation or removal. The members of the Committee may be removed, with or without cause, by a majority vote of the Board of Directors.

Chairman

Unless a Chairman is elected by the full Board of Directors, the members of the Committee shall designate a Chairman by majority vote of the full Committee membership. The Chairman shall be entitled to cast a vote to resolve any ties. The Chairman will chair all regular sessions of the Committee and set the agendas for Committee meetings.³

Delegation to Subcommittees

In fulfilling its responsibilities, the Committee shall be entitled to delegate any or all of its responsibilities to a subcommittee of the Committee.

III. MEETINGS

The Committee shall meet at least [two times annually], or more frequently as circumstances dictate. The Chairman of the Board or any member of the Committee may call meetings of the Committee. All meetings of the Committee may be held telephonically.

³ The Chairman should have prominent involvement in the recruiting process to reinforce the perception as well as the reality that the Committee is performing its duties and responsibilities. See AMERICAN BAR ASSOCIATION, *Corporate Director’s Guidebook Third Edition*, 2001 A.B.A. Sec. Pub., 56 BUS. LAW 1571

All non-management directors that are not members of the Committee may attend meetings of the Committee but may not vote.⁴ Additionally, the Committee may invite to its meetings any director, management of the corporation and such other persons as it deems appropriate in order to carry out its responsibilities. The Committee may also exclude from its meetings any persons it deems appropriate in order to carry out its responsibilities.

IV. RESPONSIBILITIES AND DUTIES⁵

The following functions shall be the common recurring activities of the Committee in carrying out its responsibilities outlined in Section I of this Charter. These functions should serve as a guide with the understanding that the Committee may carry out additional functions and adopt additional policies and procedures as may be appropriate in light of changing business, legislative, regulatory, legal or other conditions. The Committee shall also carry out any other responsibilities and duties delegated to it by the Board of Directors from time to time related to the purposes of the Committee outlined in Section I of this Charter.

The Committee, in discharging its oversight role, is empowered to study or investigate any matter of interest or concern that the Committee deems appropriate and shall have the sole authority to retain outside counsel or other experts for this purpose, including the authority to approve the fees payable to such counsel or experts and any other terms of retention.

Board Selection, Composition and Evaluation

1. **Establish criteria for the selection of new directors to serve on the Board of Directors.**
2. **Identify individuals believed to be qualified as candidates to serve on the Board of Directors and select, or recommend that the Board of Directors select, the candidates for all directorships to be filled by the Board of Directors or by the shareholders at an annual or special meeting.**⁶ In identifying candidates for membership on the Board of

⁴ This does not mean there is no role for the CEO. The CEO, although not a member of the Committee, will nonetheless in most cases have a significant role in recommending candidates for the Committee's consideration and in providing assistance in recruiting them for the Board of Directors. See AMERICAN BAR ASSOCIATION, *Corporate Director's Guidebook Third Edition*, 2001 A.B.A. Sec. Pub., 56 BUS. LAW 1571.

⁵ Some corporations have historically addressed some of the duties and responsibilities set forth in Section IV by assigning them to an executive committee of the Board of Directors, with CEO involvement, or by requiring that the entire Board of Directors be responsible for them.

⁶ The CEO may recommend to the Committee that other senior officers of the corporation be appointed to the Board of Directors. The American Law Institute's *Principles of Corporate Governance* notes that "recommendations as to nominees made by the chief executive officer for directorships to be filled by other senior executives should normally carry very substantial weight." PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS § 3.02 (American Law Inst. 1994). The role of the Committee in

Directors, the Committee shall take into account all factors it considers appropriate, which may include strength of character, mature judgment, career specialization, relevant technical skills, diversity and the extent to which the candidate would fill a present need on the Board of Directors.⁷

Review and make recommendations to the full Board of Directors, or determine, whether members of the Board should stand for re-election. Consider matters relating to the retirement of Board members, including term limits or age caps.

[In the case of a director nominated to fill a vacancy on the Board of Directors due to an increase in the size of the Board, recommend to the Board of Directors the class of directors in which the director-nominee should serve.]

3. Conduct all necessary and appropriate inquiries into the backgrounds and qualifications of possible candidates. ***In that connection, the Committee shall have sole authority to retain and to terminate any search firm to be used to assist it in identifying candidates to serve as directors of the corporation, including sole authority to approve the fees payable to such search firm and any other terms of retention.***
4. Consider questions of independence and possible conflicts of interest of members of the Board of Directors and executive officers.⁸

considering the recommendations of the CEO or other senior executives could be incorporated as a "Purpose" in Section I of this Charter.

The new NYSE standards expressly note that if the corporation is legally required by contract or otherwise to provide third parties with the ability to nominate directors (*e.g.*, preferred stock purchase rights to elect directors upon a dividend default, shareholder agreements and management agreements), the selection and nomination of such directors need not be subject to the nominating committee process.

⁷ The American Bar Association notes in its 2001 *Corporate Director's Guidebook Third Edition* that career specialization, relevant technical skills, and specific backgrounds are appropriate criteria. However, the ABA also suggests that attributes such as strength of character, independent thought, practical wisdom, and mature judgment are relevant criteria. Finally, the ABA notes that corporations have increasingly recognized that gender and ethnic diversity adds significant value and perspective in board deliberations. See AMERICAN BAR ASSOCIATION, *Corporate Director's Guidebook Third Edition*, 2001 A.B.A. Sec. Pub., 56 BUS. LAW 1571.

⁸ The term "consider" as used in this Charter is meant to suggest a more limited involvement than the term "review". See PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS § 3.02 (American Law Inst. 1994).

5. Review and make recommendations, as the Committee deems appropriate, regarding the composition and size of the Board of Directors in order to ensure the Board has the requisite expertise and its membership consists of persons with sufficiently diverse and independent backgrounds.
6. **Oversee evaluation of**[, at least annually, and as circumstances otherwise dictate,] **the Board of Directors and management.**

Committee Selection, Composition [and Evaluation]⁹

7. Recommend members of the Board of Directors to serve on the committees of the Board, giving consideration to the criteria for service on each committee as set forth in the charter for such committee, as well as to any other factors the Committee deems relevant, and where appropriate, make recommendations regarding the removal of any member of any committee.
8. Recommend members of the Board of Directors to serve as the Chair of the committees of the Board of Directors.
9. Establish, monitor and recommend the purpose, structure and operations of the various committees of the Board of Directors, the qualifications and criteria for membership on each committee of the Board and, as circumstances dictate, make any recommendations regarding periodic rotation of directors among the committees and impose any term limitations of service on any Board committee.¹⁰
10. Periodically review the charter, composition [and performance] of each committee of the Board of Directors and make recommendations to the Board for the creation of additional committees or the elimination of Board committees.

Corporate Governance

11. Consider the adequacy of the certificate of incorporation and by-laws of the corporation and recommend to the Board of Directors, as conditions dictate, that it propose amendments to the certificate of incorporation and by-laws for consideration by the shareholders.

⁹ To the extent issuers wish to include these additional responsibilities in the Committee's Charter, conforming changes should be made to the "Purposes" section of this Charter.

¹⁰ The type of structural and operations issues that could be addressed include the size of each Board committee, the advisability of additional committees (e.g., finance or public policy committee) and the duties and responsibilities to be included in the charter of each committee.

12. **Develop and recommend to the Board of Directors a set of corporate governance principles** and keep abreast of developments with regard to corporate governance to enable the Committee to make recommendations to the Board of Directors in light of such developments as may be appropriate.
13. Consider policies relating to meetings of the Board of Directors. This may include meeting schedules and locations, meeting agendas and procedures for delivery of materials in advance of meetings.

Continuity / Succession Planning Process¹¹

14. Oversee and approve the management continuity planning process. Review and evaluate the succession plans relating to the CEO and other executive officer positions and make recommendations to the Board of Directors with respect to the selection of individuals to occupy these positions.

Reports

15. ***Report regularly to the Board of Directors*** (i) following meetings of the Committee, (ii) with respect to such other matters as are relevant to the Committee's discharge of its responsibilities and (iii) with respect to such recommendations as the Committee may deem appropriate. The report to the Board of Directors may take the form of an oral report by the Chairman or any other member of the Committee designated by the Committee to make such report.
16. Maintain minutes or other records of meetings and activities of the Committee.

V. ANNUAL PERFORMANCE EVALUATION

The Committee shall perform a review and evaluation, at least annually, of the performance of the Committee and its members, including by reviewing the compliance of the Committee with this Charter. In addition, the Committee shall review and reassess, at least annually, the adequacy of this Charter and recommend to the Board of Directors any improvements to this Charter that the Committee considers necessary or valuable. The Committee shall conduct such evaluations and reviews in such manner as it deems appropriate.

- ¹¹ To the extent issuers wish to include these additional responsibilities in the Committee's Charter, conforming changes should be made to the "Purposes" section of this Charter.

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EXECUTIVE COMPENSATION
COMMITTEE OF THE BOARD OF DIRECTORS
CHARTER

I. PURPOSE

The Executive Compensation Committee (the "Committee") shall:²

- A. Discharge the responsibilities of the Board of Directors to the shareholders, potential shareholders and investment community with respect to the corporation's compensation programs and compensation of the corporation's executives; and**

¹ Items in bold represent material specifically required to be included in this Charter pursuant to the new NYSE governance listing standards as well as those governance practices that, while not technically mandatory, are strongly recommended by the NYSE (the items not technically mandatory are indicated by asterisks (*)).

This model also includes additional duties and responsibilities that we believe issuers may wish to consider as a matter of good corporate governance. Issuers should carefully evaluate, however, whether these duties and responsibilities should be conferred upon the Committee. The Committee should, of course, only be delegated those additional duties and responsibilities that it is prepared to carry out fully.

Except as otherwise provided by law, the corporation's certificate of incorporation or bylaws, or this Charter, the Committee, like other committees of the Board, is subject to the overall authority of the Board. See PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS § 3.02 (American Law Inst. 1994).

² The NYSE has indicated that these items reflect the minimum requirements under the new listing standards although issuers may wish to broaden the purposes of to the Committee as they consider appropriate.

- B. Produce an annual report on executive compensation for inclusion in the corporation's annual proxy statement, in accordance with applicable rules and regulations of the New York Stock Exchange, Inc. (the "NYSE"), Securities and Exchange Commission (the "SEC") and other regulatory bodies.**

II. STRUCTURE AND OPERATIONS

Composition and Qualifications

The Committee shall be comprised of [three or more] members of the Board of Directors, **each of whom is determined by the Board of Directors to be "independent" under the rules of the NYSE.** Additionally, no director may serve unless he or she (i) is a "Non-employee Director" for purposes of Rule 16b-3 under the Securities Exchange Act of 1934, as amended, and (ii) satisfies the requirements of an "outside director" for purposes of Section 162(m) of the Internal Revenue Code.

Appointment and Removal

The members of the Committee shall be appointed by the Board of Directors and shall serve until such member's successor is duly elected and qualified or until such member's earlier resignation or removal. The members of the Committee may be removed, with or without cause, by a majority vote of the Board of Directors.

Chairman

Unless a Chairman is elected by the full Board of Directors, the members of the Committee shall designate a Chairman by majority vote of the full Committee membership. The Chairman shall be entitled to cast a vote to resolve any ties. The Chairman will chair all regular sessions of the Committee and set the agendas for Committee meetings.

Delegation to Subcommittees

In fulfilling its responsibilities, the Committee shall be entitled to delegate any or all of its responsibilities to a subcommittee of the Committee.

III. MEETINGS

The Committee shall meet at least [two times annually], or more frequently as circumstances dictate. The Chairman of the Board or any member of the Committee may call meetings of the Committee.

As part of its review and establishment of the performance criteria and compensation of designated key executives, the Committee should meet separately at least on an annual basis with the CEO, the corporation's principal human resources executive, and any other corporate officers, as it deems appropriate. However, the Committee should meet regularly without such

officers present, and in all cases such officers shall not be present at meetings at which their performance and compensation are being discussed and determined. All meetings of the Committee may be held telephonically.

All non-management directors that are not members of the Committee may attend meetings of the Committee but may not vote.³ Additionally, the Committee may invite to its meetings any director, management of the corporation and such other persons as it deems appropriate in order to carry out its responsibilities. The Committee may also exclude from its meetings any persons it deems appropriate in order to carry out its responsibilities.

IV. RESPONSIBILITIES AND DUTIES

The following functions shall be the common recurring activities of the Committee in carrying out its responsibilities outlined in Section I of this Charter. These functions should serve as a guide with the understanding that the Committee may carry out additional functions and adopt additional policies and procedures as may be appropriate in light of changing business, legislative, regulatory, legal or other conditions. The Committee shall also carry out any other responsibilities and duties delegated to it by the Board of Directors from time to time related to the purposes of the Committee outlined in Section I of this Charter.

The Committee, in discharging its oversight role, is empowered to study or investigate any matter of interest or concern that the Committee deems appropriate and shall have the sole authority to retain outside counsel or other experts for this purpose, including the authority to approve the fees payable to such counsel or experts and any other terms of retention.

Setting Compensation for Executive Officers [and Directors]⁴

1. Establish and review the overall compensation philosophy of the corporation.
2. **Review and approve corporate goals and objectives relevant to CEO [and other executive officers] compensation**, including annual performance objectives].⁵

³ Typically, the CEO and the corporation's principal human resource executive will often meet with the compensation committee, but the CEO should neither be on the committee nor be present during all of its deliberations. See AMERICAN BAR ASSOCIATION, *Corporate Director's Guidebook Third Edition*, 2001 A.B.A. Sec. Pub., 56 BUS. LAW 1571.

⁴ In determining the long-term incentive component of compensation for the CEO [and other executive officers], the Committee should consider the corporation's performance and relative shareholder return, the value of similar incentive awards to CEOs [and other executive officers] at comparable companies, and the awards given to the corporation's CEO [and other executive officers] in past years. The Committee is not precluded from approving awards (with the ratification of the board of directors) as may be required to comply with applicable tax laws such as Rule 162(m).

3. **Evaluate the performance of the CEO [and other executive officers] in light of these criteria and, based on such evaluation, review and approve the annual salary, bonus, stock options and other benefits, direct and indirect, of the CEO [and other executive officers].**
4. In connection with executive compensation programs:
 - (i) Review and recommend to the full Board of Directors, or approve, new executive compensation programs;
 - (ii) Review on a periodic basis the operations of the corporation's executive compensation programs to determine whether they are properly coordinated and achieving their intended purpose(s);
 - (iii) Establish and periodically review policies for the administration of executive compensation programs; and
 - (iv) Take steps to modify any executive compensation program that yields payments and benefits that are not reasonably related to executive and corporate performance.
5. Establish and periodically review policies in the area of senior management perquisites.
6. Consider policies and procedures pertaining to expense accounts of senior executives.⁶
7. Review and recommend to the full Board of Directors compensation of directors as well as director's and officer's indemnification and insurance matters.⁷
8. Review and make recommendations to the full Board of Directors, or approve, any contracts or other transactions with current or former executive officers of the corporation, including consulting arrangements, employment contracts, severance or termination arrangements and loans to employees made or guaranteed by the corporation.

⁵ The American Bar Association points out that "[t]he structure and components of an executive compensation package will vary among industries and among companies. Company size, industry characteristics, competitive factors, location and corporate culture are all relevant factors. There is no single 'right' answer." AMERICAN BAR ASSOCIATION, *Corporate Director's Guidebook Third Edition*, 2001 A.B.A. Sec. Pub., 56 BUS. LAW 1571.

⁶ This responsibility could also be properly allocated to the audit committee.

⁷ This responsibility could also be properly allocated to the nominating/corporate governance committee.

Monitoring Incentive and Equity-Based Compensation Plans

9. **Review and make recommendations to the Board of Directors with respect to the corporation's incentive-compensation plans and equity-based plans**, and oversee the activities of the individuals responsible for administering those plans.
10. **Review and approve all equity compensation plans of the corporation that are not otherwise subject to the approval of the corporation's shareholders.**
11. Review and make recommendations to the full Board of Directors, or approve, all awards of shares or share options pursuant to the corporation's equity-based plans.
12. Monitor compliance by executives with the rules and guidelines of the corporation's equity-based plans.
13. Review and monitor employee pension, profit sharing and benefit plans.
14. ***Select, retain and/or replace, as needed, compensation and benefits consultants and other outside consultants to provide independent advice to the Committee. In that connection, in the event the Committee retains a compensation consultant, the Committee shall have the sole authority to approve such consultant's fees and other retention terms.*⁸**

Reports

15. **Prepare an annual report on executive compensation for inclusion in the corporation's proxy statement, in accordance with applicable rules and regulations of the NYSE, SEC and other applicable regulatory bodies.**
16. ***Report regularly to the Board of Directors*** (i) following meetings of the Committee, (ii) with respect to such other matters as are relevant to the Committee's discharge of its responsibilities and (iii) with respect to such recommendations as the Committee may deem appropriate. The report to the Board of Directors may take the form of an oral report by the Chairman or any other member of the Committee designated by the Committee to make such report.
17. Maintain minutes or other records of meetings and activities of the Committee.

⁸ In addition to suggesting that the Committee have sole authority to approve fees and retention terms of consulting firms, the NYSE has indicated that the responsibility of retaining and terminating such firms should be in the sole authority of the Committee.

V. ANNUAL PERFORMANCE EVALUATION

The Committee shall perform a review and evaluation, at least annually, of the performance of the Committee and its members, including by reviewing the compliance of the Committee with this Charter. In addition, the Committee shall review and reassess, at least annually, the adequacy of this Charter and recommend to the Board of Directors any improvements to this Charter that the Committee considers necessary or valuable. The Committee shall conduct such evaluations and reviews in such manner as it deems appropriate.