



November 5, 2003

Final NYSE Corporate Governance Listing Standards Adopted

On November 4, 2003 the Securities and Exchange Commission approved the New York Stock Exchange's final rules regarding Corporate Governance Listing Standards. All companies with common equity securities listed on the NYSE, with certain exceptions, are expected to comply with the rules.

Effective Dates and Transition Periods

The final rules provide for substantially shorter transition periods than previously proposed by the NYSE. Listed companies have until the earlier of their first annual meeting after January 15, 2004, or October 31, 2004, to comply with the new standards. Companies with classified boards would generally have until the second annual meeting after January 15, 2004 (but not later than December 31, 2005) to comply with the new independence standards, with the exception of independence standards applicable to audit committee members under the Sarbanes-Oxley Act. Existing audit committee requirements continue in effect.

Independent Directors

Listed companies must have a majority of independent directors. A director is not "independent" unless the board of directors affirmatively determines that the director has no material relationship with the company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company). Boards are expected to consider all relevant facts and circumstances including all material relationships. However, since the concern is independence from management, ownership of even a significant amount of stock, by itself, is not necessarily a bar to finding independence.

Companies must disclose these determinations in the annual proxy statement or, if the company does not file an annual proxy statement, in the annual report of Form 10-K filed with the SEC. A board may adopt and disclose categorical standards to assist it in making the determination of independence and may make a general disclosure if a director meets these standards. If a director does not meet these standards a specific explanation is required. A company must disclose any standard it adopts and may make general statements that an independent director meets those standards without detailing the immaterial relationships between individual directors and the company. In the event that a director with a relationship that does not fit within the disclosed standards is determined to be independent, the board must disclose its basis for such determination.

In addition, a director who is an employee, or whose immediate family member is an executive officer, of the company is not independent until three years after the end of such employment relationship. Employment as an interim Chairman or CEO will not disqualify a director from being considered independent following that employment.

A director who receives, or whose immediate family member receives, more than \$100,000 per year in direct compensation from the company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service), is not independent until three years after he or she ceases to receive more than \$100,000 per year in compensation. Compensation received by a director for former service as Chairman or CEO need not be considered under this test. Also, compensation received by an immediate family member for service as a non-executive employee of the company need not be considered under this test.

A director who is affiliated with or employed by, or whose immediate family member is affiliated with or employed in a professional capacity by, a present or former internal or external auditor of the company is not independent until three years after the end of the affiliation or the employment or auditing relationship.

A director who is employed, or whose immediate family member is employed, as an executive officer of another company where any of the listed company's present executives serve on that company's compensation committee is not independent until three years after the end of such service or the employment relationship.

A director who is an executive officer or an employee, or whose immediate family member is an executive officer, of a company that makes payments to, or receives payments from, the listed company for property or services in an amount which, in any single fiscal year, exceeds the greater of \$1 million, or 2% of such other company's consolidated gross revenues, is not independent until three years after falling below such threshold. The final rules also clarify that non-profit organizations would not be covered by this test. However, the final standards would require that a listed company disclose in its proxy statement any contributions made to a non-profit organization where a director serves as an executive officer if, during the past three years, contributions in any one year exceed \$1 million or 2% of the charitable organization's consolidated gross revenues. Moreover, commentary to the new standards reminds boards of their obligation to consider the materiality of relationships between directors and non-profit organizations that receive corporate contributions.

Transition Rule With respect to the above provisions that contain the three-year look-back period, the NYSE will phase in the look-back period by applying only a one-year look-back for the first year after adoption of these new standards. The three-year look-back will begin to apply only from and after November 4, 2004.

Meetings of Non-management Directors

Non-management directors are required to meet in regularly scheduled executive sessions without management. No presiding director need be chosen for these meetings; however, if one is, it must be disclosed in the annual proxy statement or, if the company does not file an annual proxy statement then, in the Form 10-K. Alternatively, the company may disclose the procedure by which a presiding director is selected for each executive session.

The company must also disclose a method for interested parties to communicate directly with the presiding director or with the non-management directors as a group. If non-management directors include directors who are not independent, then companies should at least once a year schedule an executive session including only independent directors.

Committees

Nominating/Corporate Governance Committee Listed companies must have a nominating/corporate governance committee composed entirely of independent directors. The committee is required to have a written charter that addresses its purpose and responsibilities and that requires an annual performance evaluation of the committee. The committee's purpose and responsibilities must include the following: identify individuals qualified to become board members, consistent with criteria established by the board, and select, or recommend that the board select, the director nominees for the next annual meeting of shareholders; develop and recommend to the board a set of corporate governance principles applicable to the company; and oversee the evaluation of the board and management.

Compensation Committee Listed companies must have a compensation committee composed entirely of independent directors. The committee must have a written charter that addresses the committee's purpose and responsibilities and that requires an annual performance evaluation of the committee. The committee's purpose and responsibilities must include the following: direct responsibility to review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and, either as a committee or together with the other independent directors (as directed by the board), determine and approve the CEO's compensation level based on this evaluation; make recommendations to the board with respect to non-CEO compensation, incentive-compensation plans and equity-based plans; and produce a compensation committee report on executive compensation as required by the SEC to be included in the company's annual proxy statement or Form 10-K.

Audit Committee Listed companies must have an audit committee that satisfies the requirements of Rule 10A-3 under the Securities Exchange Act of 1934. The audit committee must have a minimum of three members and all must be independent under the standards described above. Each member of the audit committee must be financially literate. At least one member must have accounting or related financial management expertise, as the company's board interprets such qualification in its business judgment. If an audit committee member serves on the audit committees of more than three public companies, and the listed company does not limit the number of audit committees on which its audit committee members serve, then

in each case, the board must determine that such simultaneous service would not impair the ability of such member to effectively serve on the listed company's audit committee and disclose such determination in the annual proxy statement or, if the company does not file an annual proxy statement then, in the Form 10-K. The audit committee must have a written charter that addresses the committee's duties and responsibilities and that requires an annual performance evaluation of the committee. Audit committees may not allocate their responsibilities to other committees.

The audit committee's purpose, at a minimum, must be to assist board oversight of (i) the integrity of the company's financial statements, (ii) the company's compliance with legal and regulatory requirements, (iii) the independent auditor's qualifications and independence, and (iv) the performance of the company's internal audit function and independent auditors; and to prepare an audit committee report as required by the SEC to be included in the company's annual proxy statement. The duties and responsibilities of the audit committee must include those set forth in Rule 10A-3(b)(2), (3), (4) and (5) of the Securities Exchange Act of 1934 (regarding the responsibilities relating to registered public accounting firms, complaints, authority to engage advisers, and funding), as well as to, (i) at least annually, obtain and review a report by the independent auditor describing: the firm's internal quality-control procedures; any material issues raised by the most recent internal quality-control review, or peer review of the firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues; and (to assess the auditor's independence) all relationships between the independent auditor and the company; (ii) discuss the company's annual audited financial statements and quarterly financial statements with management and the independent auditor, including the company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations"; (iii) discuss the company's earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies; (iv) discuss policies with respect to risk assessment and risk management; (v) meet separately, periodically, with management, with internal auditors (or other personnel responsible for the internal audit function) and with independent auditors; (vi) review with the independent auditor any audit problems or difficulties and management's response; (vii) set clear hiring policies for employees or former employees of the independent auditors; and (viii) report regularly to the board of directors.

Internal Audit

Each listed company is required to have an internal audit function to provide management and the audit committee with ongoing assessments of the company's risk management processes and system of internal control. A company may choose to outsource this function to a third party service provider other than its independent auditor.

Corporate Governance Guidelines

Listed companies must adopt and disclose corporate governance guidelines. The guidelines must address key areas such as director qualification standards, director responsibilities, director access to management and, as necessary and appropriate, independent advisers, director compensation, director orientation and continuing education, management

succession, and annual performance evaluation of the board. The guidelines, along with the charters of the company's most important committees (including at least the audit, and if applicable, compensation and nominating committees), must be published on the company's website. A company must state in its Form 10-K that the foregoing information is available on its website, and that the information is available in print to any shareholder who requests it.

Code of Business Conduct and Ethics

Listed companies must adopt and disclose a code of business conduct and ethics for directors, officers and employees, and promptly disclose any waivers of the code for directors or executive officers. Each code must require that any waiver of the code for executive officers or directors may be made only by the board or a board committee and must be promptly disclosed to shareholders. Each code must also contain compliance standards and procedures that will facilitate the effective operation of the code. The code must be included on the company's website and the company's Form 10-K must state that the code is available on its website and that the information is available in print to any shareholder who requests it.

The code must address the following: conflicts of interest, corporate opportunities, confidentiality, fair dealing, protection and proper use of company assets, compliance with laws, rules and regulations (including insider trading laws), and encouraging the reporting of any illegal or unethical behavior.

Certification and Notice

Each listed company CEO must certify to the NYSE each year that he or she is not aware of any violation by the company of NYSE corporate governance listing standards. This certification must be disclosed in the company's annual report to shareholders or, if the company does not prepare an annual report to shareholders, in the company's Form 10-K.

Each listed company CEO must promptly notify the NYSE in writing after any executive officer of the listed company becomes aware of any material non-compliance with any applicable provision of the NYSE's corporate governance standards.

Penalties for Non-compliance

The NYSE may issue a public reprimand letter to any listed company that violates a NYSE listing standard. For companies that repeatedly or flagrantly violate NYSE listing standards, suspension and delisting remain as severe penalties.

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The information in this Alert is intended for general information purposes only and should not be considered legal advice or opinion on any specific facts or circumstances. You are urged to contact a professional advisor concerning any specific question you may have relating to your own situation.

If you would like additional information about the matters presented in this Alert you may contact:

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