

Recommendations to the NYSE Board of Directors

We make the following recommendations to the NYSE Board of Directors, for implementation by the NYSE:

1. Require listed companies to have a majority of independent directors.

Effective boards of directors exercise independent judgment in carrying out their responsibilities. We believe requiring a majority of independent directors will increase the quality of board oversight and lessen the possibility of damaging conflicts of interest.²

We recognize that companies that do not already have majority-independent boards will need time to recruit qualified independent directors. We believe that two years should be ample. Accordingly, we recommend that all currently listed companies be required to achieve majority-independence within 24 months of this rule's enactment. Companies newly listing must comply within 24 months. Additionally, given the importance of majority-independent boards, a company must publicly disclose when it becomes compliant with this requirement.

2. Tighten the NYSE definition of “independent director.”

- **No director qualifies as “independent” unless the board of directors affirmatively determines that 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). Companies must disclose these determinations.**
- **In addition:**
 - **No director who is a former employee of the listed company can be “independent” until five years after the employment has ended.**

² Existing NYSE listing standards require three independent directors on each listed company board. See NYSE Listed Company Manual Section 303.01(B)(2)(a) (Composition/Expertise Requirement of Audit Committee Members).

- **No director who is, or in the past five years has been, affiliated with or employed by a (present or former) auditor of the company (or of an affiliate) can be “independent” until five years after the end of either the affiliation or the auditing relationship.**
- **No director can be “independent” if he or she is, or in the past five years has been, part of an interlocking directorate in which an executive officer of the listed company serves on the compensation committee of another company that employs the director.**
- **Directors with immediate family members in the foregoing categories must likewise be subject to the five-year “cooling-off” provisions for purposes of determining “independence.”**

It is not possible to anticipate, or explicitly to provide for, all circumstances that might signal potential conflicts of interest, or that might bear on the materiality of a director’s relationship to a listed company.³ Accordingly, we think it best that boards making “independence” determinations broadly consider all relevant facts and circumstances. In particular, when assessing the materiality of a director’s relationship with the company, the board should consider the

³ Existing NYSE listing standards define “independence” solely for audit committee members. See NYSE Listed Company Manual Section 303.01(B)(2)(a) (Composition/Expertise Requirement of Audit Committee Members) and 303.01(B)(3) (Independence Requirement of Audit Committee Members). The existing definition of “independence” precludes any relationship with the company that may interfere with the exercise of a director’s independence from management and the company. In addition, the NYSE listing standards prohibit an employee of the company or any of its affiliates from serving on the audit committee until three years after termination of employment. (Note, however, that one director who is a former employee (or family member of a former employee) may serve within three years of employment termination, provided that the board determines, in its business judgment, that the individual’s membership on the audit committee would be in the best interests of the company. The board must disclose the nature of the individual’s relationship, and the reasons for its “best interests” determination, in the company’s next annual proxy statement. See NYSE Listed Company Manual Section 303.02(D) (Independence Requirement of Audit Committee Members)). Additionally, a director who is an immediate family member of an executive officer of the company (or any of its affiliates) may not serve on the audit committee until three years after the termination of the officer’s employment. Currently, a director who has a direct or indirect business relationship with the company may serve on the audit committee only if the Board of Directors determines, in its business judgment, that the relationship does not interfere with the director’s exercise of independent judgment. No such determination is required once the relationship has been terminated for three years.

issue not merely from the standpoint of the director, but also from that of persons or organizations with which the director has an affiliation. Material relationships can include commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships (among others). The basis for a board determination that a relationship is not material should be disclosed in the company's annual proxy statement.

We believe present employees of a company, or of the company's present auditor, have a material relationship with the company and cannot be deemed "independent." Former employment with the company itself, former employment with the company's present auditor, or present employment with its former auditor, in our view should not be *per se* bars to an "independence" finding after the passage of a five-year "cooling-off" period. We view compensation committee interlocks as warranting the same treatment. We do not view ownership, or affiliation with the owner, of a less than controlling amount of stock as a *per se* bar to an independence finding.

3. Empower non-management directors to serve as a more effective check on management.

- **The non-management directors of each company must meet at regularly scheduled executive sessions without management.**
- **The independent directors must designate, and publicly disclose the name of, the director who will preside at the executive sessions.**

To promote open discussion among the non-management directors, companies must schedule regular executive sessions in which those directors meet without management participation. Regular scheduling of such meetings is important not only to foster better communication among non-management directors, but also to prevent any negative inference from attaching to the calling of such executive sessions. The name of the director who will preside at these meetings must be disclosed in the annual proxy statement so as to facilitate communications by employees or shareholders directly with the non-management directors. The presiding director may be a non-executive chairman of the board, if one exists, or another director.⁴

⁴ There are no existing NYSE listing standards on this topic.

4. Require listed companies to have a nominating/corporate governance committee composed entirely of independent directors.

A nominating/corporate governance committee is central to the effective functioning of the board. New director and board committee nominations are among a board's most important functions. Placing this responsibility in the hands of an independent nominating/corporate governance committee can enhance the independence and quality of nominees. The committee is also responsible for taking a leadership role in shaping the corporate governance of a corporation.

The nominating/corporate governance committee must have a written charter that addresses:

- **the committee's purpose – which, at minimum, must be to: identify individuals qualified to become board members, and to select, or to recommend that the board select, the director nominees for the next annual meeting of shareholders; and develop and recommend to the board a set of corporate governance principles applicable to the corporation.**
- **the committee's goals and responsibilities – which must reflect, at minimum, the board's criteria for selecting new directors, and oversight of the evaluation of the board and management.**
- **an annual performance evaluation of the committee.**

We believe the nominating/corporate governance committee charter should also address the following items: committee member qualifications; committee member appointment and removal; committee structure and operations (including authority to delegate to subcommittees); and committee reporting to the board. In addition, the charter should give the nominating/corporate governance committee sole authority to retain and terminate any search firm to be used to identify director candidates, including sole authority to approve the search firm's fees and other retention terms.⁵

⁵ Existing NYSE listing standards do not require a nominating or governance committee.

5. Require listed companies to have a compensation committee composed entirely of independent directors.

We believe it is essential that each listed company have a compensation committee, and that the committee's membership be confined to independent directors.

The compensation committee must have a written charter that addresses:

- **the committee's purpose – which, at minimum, must be to discharge the board's responsibilities relating to compensation of the company's executives, and to produce an annual report on executive compensation for inclusion in the company's proxy statement, in accordance with applicable rules and regulations.**
- **the committee's duties and responsibilities – which, at minimum, must be 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 set the CEO's compensation level based on this evaluation.** In determining the long-term incentive component of CEO compensation, the committee should consider the company's performance and relative shareholder return, the value of similar incentive awards to CEOs at comparable companies, and the awards given to the listed company's CEO in past years.
 - **make recommendations to the board with respect to incentive-compensation plans and equity-based plans.**
- **an annual performance evaluation of the compensation committee.**

We believe the compensation committee charter should also address the following items: committee member qualifications; committee member appointment and removal; committee structure and operations (including authority to delegate to subcommittees); and committee reporting to the board.

Additionally, if a compensation consultant is to assist in the evaluation of director, CEO or senior executive compensation, the compensation committee charter should give that committee sole authority to retain and terminate the consulting firm, including sole authority to approve the firm's fees and other retention terms.⁶

6. Add to the “independence” requirement the following new requirements for audit committee membership at listed companies:

- **Director’s fees are the only compensation an audit committee member may receive from the company.**
- **A director who meets the definition of “independence” mandated for all audit committee members, but who also holds 20% or more of the company’s stock (or who is a general partner, controlling shareholder or officer of any such holder) cannot chair, or be a voting member of, the audit committee.**
- **The audit committee chair must have accounting or related financial management expertise.**

While it is not the audit committee’s responsibility to certify the company’s financial statements or to guarantee the auditor’s report, the committee stands at the crucial intersection of management, independent auditors, internal auditors and the board of directors. We support additional directors’ fees to compensate audit committee members for the significant time and effort they expend to fulfill their duties as audit committee members, but we do not believe that any member of the audit committee should receive any compensation other than such director’s fees from the company.⁷

⁶ Existing NYSE listing standards do not require a compensation committee.

⁷ Normal directors’ fees (including equity-based awards) include the typical additional amounts paid to chairs of committees and to members of committees that meet more frequently or for longer periods of time. Additionally, if a director satisfies the definition of “independent director” (as provided in Recommendation 2), then his or her receipt of a pension or other form of deferred compensation from the company for prior service (provided such compensation is not contingent in any way on continued service) will not preclude him or her from satisfying the requirement that director’s fees are the only form of compensation he or she receives from the company.

Because of the audit committee's demanding role and responsibilities, and the time commitment attendant to committee membership, we urge each prospective audit committee member to evaluate carefully the existing demands on his or her time before accepting this important assignment. Additionally, if an audit committee member simultaneously serves on the audit committee of more than three public companies, and the NYSE-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.

A director who is associated with a holder of 20% or more of a company's voting stock and who has been determined by the board to be "independent" may serve as an audit committee member but may not chair the committee or participate in its votes. We believe that allowing such a director to be a non-voting committee member fairly balances the value of significant shareholder participation in committee discussions against the risk that significant shareholders may have interests diverging from those of other shareholders.

Existing NYSE listing standards require that all audit committee members be financially literate, and that at least one member have accounting or related financial management expertise.⁸ We believe that requiring the committee's chair to have this expertise will better enable the committee to evaluate independently the information it receives, to recognize problems, and to seek appropriate solutions. While all members of the audit committee should play a vigorous role, it is particularly important that the chair have the background and seasoning to assure that the committee itself retains control over its agenda. Further, a chair with the requisite accounting/financial background, which includes current or former senior executive officers of corporations, is also more likely to develop direct lines of communication with key audit personnel, both from within the company and from the company's independent accountants.

⁸ See NYSE Listed Company Manual Section 303.01(B)(2) (Composition/Expertise Requirement of Audit Committee Members).

7. Increase the authority and responsibilities of the audit committee, including granting it the sole authority to hire and fire independent auditors, and to approve any significant non-audit relationship with the independent auditors.

The audit committee must have a written charter that addresses:

- **the committee’s purpose – which, at minimum, must be to:**
 - (a) 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 (b) prepare the report that SEC rules require be included in the company’s annual proxy statement.⁹**
- **the duties and responsibilities of the audit committee – which, at minimum, must be to:**
 - **retain and terminate the company’s independent auditors (subject, if applicable, to shareholder ratification).** In connection with this requirement, the audit committee must have the sole authority to approve all audit engagement fees and terms, as well as all significant non-audit engagements with the independent auditors.¹⁰ This requirement does not preclude the committee from obtaining the input of management, but these responsibilities may not be delegated to management.
 - **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**

⁹ Existing NYSE listing standards require the audit committee charter to specify the scope of the committee’s responsibilities and its manner of carrying out those responsibilities, including the committee’s structure, processes, and membership requirements. See NYSE Listed Company Manual Section 303.01 (Audit Committee), Subsection B(1)(a) (Formal Charter).

¹⁰ Existing NYSE listing standards state that the audit committee charter must specify that the selection, evaluation and firing of the independent auditor is subject to the “ultimate” authority of the audit committee (consisting solely of independent directors) and the board of directors. See NYSE Listed Company Manual Section 303.01 (Audit Committee), Subsection B(1)(b) (Formal Charter).

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. After reviewing the foregoing report and the independent auditor's work throughout the year, the audit committee will be in a position to evaluate the auditor's qualifications, performance and independence. This evaluation should include the review and evaluation of the lead partner of the independent auditor. In making its evaluation, the audit committee should take into account the opinions of management and the company's internal auditors (or other personnel responsible for the internal audit function). The audit committee should further consider whether, in order to assure continuing auditor independence, there should be regular rotation of the lead audit partner, or even of the audit firm itself. We do not mandate periodic rotation of auditors because we believe that mandatory rotation may undercut the effectiveness of the independent auditor and the quality of the audit. The transitions between auditors could disrupt the audit process, deprive auditors of "institutional memory," and make the new auditors more dependent on management for information. The audit committee should make its own decision as to whether the company is obtaining high-quality audits and whether rotation of the auditor would be helpful for the particular company.¹¹ The audit committee should present its conclusions with respect to the independent auditor to the full board.¹²

¹¹ The Committee acknowledges the view of our Co-Chairman, H. Carl McCall, Comptroller of the State of New York and Sole Trustee, Common Retirement Fund of the State of New York, that mandatory rotation may improve auditor independence and therefore should be mandated.

¹² Existing NYSE listing standards state that the audit committee charter must specify that the audit committee must engage in a dialogue with the independent auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor, and must ensure that the independent auditor periodically submits to the audit committee a formal written statement delineating all relationships between the auditor and the company. The charter must also specify that the audit committee is responsible for recommending that the board take appropriate action in response to the independent auditor's report to satisfy itself of the auditor's independence. See NYSE Listed Company Manual Section 303.01 (Audit Committee), Subsection B(1)(c) (Formal Charter).

- **discuss the 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.”**
- **discuss earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies.**
- **as appropriate, obtain advice and assistance from outside legal, accounting or other advisors.** In the course of fulfilling its duties, the audit committee may wish to consult with independent advisors. The audit committee must be empowered to retain these advisors without seeking board approval.
- **discuss policies with respect to risk assessment and risk management.** While it is the job of the CEO and senior management to assess and manage the company’s exposure to risk, the audit committee must discuss guidelines and policies to govern the process by which this is handled. The audit committee should discuss the company’s major financial risk exposures and the steps management has taken to monitor and control such exposures.
- **meet separately, at least quarterly, with management, with internal auditors (or other personnel responsible for the internal audit function), and with independent auditors.** To perform its oversight functions most effectively, the audit committee must have the benefit of separate sessions with management, the independent auditors and those responsible for the internal audit function. We expect all NYSE-listed companies to have an internal audit function. These separate sessions, which must occur at least quarterly, may be more productive than joint sessions in surfacing issues warranting committee attention.
- **review with the independent auditor any audit problems or difficulties and management’s response.** The audit committee must regularly review with the independent auditor any difficulties the auditor encountered in the course of the audit

work, including any restrictions on the scope of the independent auditor's activities or on access to requested information, and any significant disagreements with management. Among the items the audit committee may want to review with the auditor are: any accounting adjustments that were noted or proposed by the auditor but were "passed" (as immaterial or otherwise); any communications between the audit team and the audit firm's national office respecting auditing or accounting issues presented by the engagement; and any "management" or "internal control" letter issued, or proposed to be issued, by the audit firm to the company. The review should also include discussion of the responsibilities, budget and staffing of the company's internal audit function.

- **set clear hiring policies for employees or former employees of the independent auditors.** Employees or former employees of the independent auditor are often valuable additions to corporate management. Such individuals' familiarity with the business, and personal rapport with the employees, may be attractive qualities when filling a key opening. However, the audit committee should set hiring policies taking into account the pressures that may exist for auditors consciously or subconsciously seeking a job with the company they audit.
- **report regularly to the board of directors.** The audit committee should review with the full board any issues that arise with respect to the quality or integrity of the company's financial statements, the company's compliance with legal or regulatory requirements, the performance and independence of the company's independent auditors, or the performance of the internal audit function.
- **an annual performance evaluation of the audit committee.**

While the fundamental responsibility for the company's financial statements and disclosures rests with management and the independent auditor, the audit committee must review: (a) major issues regarding accounting principles and financial statement presentations, including any significant changes in the company's selection or application of accounting principles, and major issues as to the adequacy of the company's internal controls and any special audit steps adopted in light

of material control deficiencies; (b) 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 analyses of the effects of alternative GAAP methods on the financial statements; (c) the effect of regulatory and accounting initiatives, as well as off-balance sheet structures on the financial statements of the company; and (d) earnings press releases (paying particular attention to any use of “pro forma,” or “adjusted” non-GAAP, information), as well as financial information and earnings guidance provided to analysts and rating agencies.¹³

8. Increase shareholder control over equity-compensation plans.

- **Shareholders must be given the opportunity to vote on all equity-compensation plans.**
- **A broker may not vote a customer’s shares on any equity-compensation plan unless the broker has received that customer’s instructions to do so.**

Equity-compensation plans can help align shareholder and management interests, and equity-based awards have become very important components of employee compensation. In order to provide checks and balances on the process of earmarking shares to be used for equity-based awards, and to provide shareholders a voice in the resulting dilution, we believe that all equity-compensation plans, and any material revisions to the terms of such plans (including for purposes of repricing existing options), should be subject to stockholder approval.¹⁴ Additionally, we recommend that the SEC be asked to

¹³ Existing NYSE listing standards provide that the board of directors must adopt and approve a formal written charter for the audit committee, and that such charter must be reviewed annually. See NYSE Listed Company Manual Section 303.01 (Audit Committee), Subsection B(1)(a) (Formal Charter). The audit committee charter must be reviewed at least annually, and the company must provide an annual certification to the NYSE affirming that the committee reviewed and reassessed the adequacy of the charter.

¹⁴ Existing NYSE listing standards require shareholder approval of equity-compensation plans in which officers or directors may participate, but provide exceptions to the shareholder approval requirement: No shareholder approval is required for any broadly-based plan, or for any plan that provides (a) that no single officer or director may acquire under such plan more than one percent of the shares of the issuer’s common stock outstanding at the time such plan is adopted, and (b) that, together with all other non-exempt plans of the issuer, does not authorize the issuance of more than five percent of the issuer’s common stock outstanding at the time such plan is adopted. See NYSE Listed Company Manual Section 312.03 (Shareholder Approval).

consider requiring inclusion in the proxy statement of additional quantitative information regarding the potential valuation of awards that may be made under such plans.

We further recommend that the NYSE preclude its member organizations from giving a proxy to vote on equity-compensation plans unless the beneficial owner of the shares has given voting instructions.¹⁵

We have also considered the views of a wide variety of constituents as to the accounting treatment of stock options. While we recognize that the accounting treatment of options is within the exclusive province of the Financial Accounting Standards Board (FASB) and the SEC, we note that guaranteeing shareholder control over plans may ameliorate some of the concerns of those in favor of changing the existing accounting treatment of stock options.

9. Require listed companies to adopt and disclose their corporate governance guidelines.

No single set of guidelines would be appropriate for every company, but certain key areas of universal importance include: director qualifications and responsibilities; responsibilities of key board committees; and director compensation. Given the importance of corporate governance, each listed company's website must include its corporate governance guidelines, the charters of its most important committees (including at least the audit, compensation and nominating

¹⁵ Existing NYSE listing standards permit a broker to give a proxy to vote stock if the broker (a) has not received voting instructions from the beneficial owner by the date specified in the statement accompanying the proxy material, and (b) has no knowledge of any contest as to the action to be taken at the meeting, provided that such action is adequately disclosed to shareholders and does not include authorization for a merger, consolidation or any matter which may affect substantially the rights or privileges of such stock. See NYSE Listed Company Manual Section 402.08 (Giving a Proxy to Vote Stock). Existing NYSE listing standards prohibit a broker from giving a proxy to vote without instructions from the beneficial owner when the matter to be voted upon authorizes issuances of stock, or options to purchase stock, to directors, officers or employees in an amount which exceeds five percent of the total amount of the stock outstanding; when a plan is amended to extend its duration, the NYSE factors into the calculation the number of shares that remain available for issuance, the number of shares subject to outstanding options and any shares being added. Should there be more than one plan being considered at the same meeting, all shares are aggregated. See NYSE Rule 452 and NYSE Listed Company Manual Section 402.08(B)(12).

committees) and the company's code of business conduct and ethics (*see* Recommendation 10 below). Each company's annual report must state that the foregoing information is available on its website, and that the information is available in print to any shareholder who requests it. Making this information publicly available should promote better investor understanding of the company's policies and procedures, as well as more conscientious adherence to them by directors and management.¹⁶

The following subjects should be addressed in the corporate governance guidelines:

- **Director qualification standards.** These standards should, at minimum, reflect the independence requirements set forth in Recommendations 1 and 2 above. We encourage companies to address other substantive qualification requirements, including policies limiting the number of boards on which a director may sit, and director tenure, retirement and succession.
- **Director responsibilities.** These responsibilities should clearly articulate what is expected from a director, including basic duties and responsibilities with respect to attendance at board meetings and advance review of meeting materials.
- **Director access to management and, as necessary and appropriate, independent advisors.**
- **Director compensation.** Director compensation guidelines should include general principles for determining the form and amount of director compensation (and for reviewing those principles, as appropriate). The board should be aware that questions as to directors' independence may be raised when directors' fees and emoluments exceed what is customary. Similar concerns may be raised when the company makes substantial charitable contributions to organizations in which a director is affiliated, or enters into consulting contracts with (or provides other indirect forms of compensation to) a director.

¹⁶ There is no existing NYSE listing standard regarding a company's adoption of corporate governance guidelines.

The board should critically evaluate each of these matters when determining the form and amount of director compensation, and the independence of a director.

- **Director orientation and continuing education.**
- **Management succession.** Succession planning should include policies and principles for CEO selection and performance review, as well as policies regarding succession in the event of an emergency or the retirement of the CEO.
- **Annual performance evaluation of the board.** The board should conduct a self-evaluation at least annually to determine whether it and its committees are functioning effectively.

10. Require listed companies to 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.

No code of business conduct and ethics can replace the thoughtful behavior of an ethical director, officer or employee. However, we believe such a code can focus the board and management on areas of ethical risk, provide guidance to personnel to help them recognize and deal with ethical issues, provide mechanisms to report unethical conduct, and help to foster a culture of honesty and accountability.¹⁷

Each code of business conduct and ethics 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. This disclosure requirement should inhibit casual and perhaps questionable waivers, and should help assure that, when warranted, a waiver is accompanied by appropriate controls designed to protect the company. It will also give shareholders the opportunity to evaluate the board's performance in granting waivers.

Each code of business conduct and ethics must also contain compliance standards and procedures that will facilitate the effective operation of the code. These standards should ensure the prompt and consistent action against violations of the code.

¹⁷ There is no existing NYSE listing standard regarding a company's adoption of such a code.

Each company may determine its own policies, but all listed companies should address the most important topics, including the following:

- **Conflicts of interest.** A “conflict of interest” occurs when an individual’s private interest interferes in any way – or even appears to interfere – with the interests of the corporation as a whole. A conflict situation can arise when an employee, officer or director takes actions or has interests that may make it difficult to perform his or her company work objectively and effectively. Conflicts of interest also arise when an employee, officer or director, or a member of his or her family, receives improper personal benefits as a result of his or her position in the company. Loans to, or guarantees of obligations of, such persons are of special concern. The company should have a policy prohibiting such conflicts of interest, and providing a means for employees, officers and directors to communicate potential conflicts to the company.
- **Corporate opportunities.** Employees, officers and directors should be prohibited from (a) taking for themselves personally opportunities that are discovered through the use of corporate property, information or position; (b) using corporate property, information, or position for personal gain; and (c) competing with the company. Employees, officers and directors owe a duty to the company to advance its legitimate interests when the opportunity to do so arises.
- **Confidentiality.** Employees should maintain the confidentiality of information entrusted to them by the company or its customers, except when disclosure is authorized or legally mandated. Confidential information includes all non-public information that might be of use to competitors, or harmful to the company or its customers, if disclosed.
- **Fair dealing.** Each employee should endeavor to deal fairly with the company’s customers, suppliers, competitors and employees. No employee should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice.

- **Protection and proper use of company assets.** All employees should protect the company's assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on the company's profitability. All company assets should be used for legitimate business purposes.
- **Compliance with laws, rules and regulations (including insider trading laws).** The company should proactively promote compliance with laws, rules and regulations, including insider trading laws. Insider trading is both unethical and illegal and should be dealt with firmly.
- **Encouraging the reporting of any illegal or unethical behavior.** The company should proactively promote ethical behavior. The company should encourage employees to talk to supervisors, managers or other appropriate personnel when in doubt about the best course of action in a particular situation. Additionally, employees should report violations of laws, rules, regulations or the code of business conduct to appropriate personnel. To encourage employees to report such violations, the company must ensure that employees know that the company will not allow retaliation for reports made in good faith.

11. Require listed foreign private issuers to disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under NYSE listing standards.

Both SEC rules and NYSE policies have long recognized that foreign private issuers differ from domestic companies in the regulatory and disclosure regimes and customs they follow, and that it is appropriate to accommodate those differences. For this reason, the NYSE has permitted listed non-U.S. companies to follow home-country practices with respect to a number of corporate governance matters, such as the audit committee requirement and the NYSE shareholder approval and voting rights rules.¹⁸ While the NYSE should continue to respect different approaches, listed foreign private issuers must make their U.S. investors aware of the significant ways in which their home-country

¹⁸ See NYSE Listed Company Manual Section 303.00 (Corporate Governance Standards).

practices differ from those followed by domestic companies under NYSE listing standards. We also suggest that the NYSE work with its counterparts throughout the world to strive for harmony in corporate governance principles, with the goal of establishing global principles to be implemented by global companies no matter where those companies are based.

12. Require each listed company CEO to certify to the NYSE each year:

- **that the company has established procedures for verifying the accuracy and completeness of the information provided to investors; that those procedures have been carried out; and that, based upon the CEO's assessment of the adequacy of those procedures and of the diligence of those carrying them out, the CEO has no reasonable cause to believe that the information provided to investors is not accurate and complete in all material respects. The CEO must further certify that he or she has reviewed with the board those procedures and the company's compliance with them.**
- **that he or she is not aware of any violation by the company of NYSE listing standards.**

Reporting accurate, complete and understandable information about a listed company's business, earnings and financial condition is an absolute requirement of listing on the NYSE. The annual CEO certification to the NYSE proposed here will focus the board and the CEO on this requirement.¹⁹ Similarly, the CEO's annual certification to the NYSE that he or she is unaware of any violation by the company of NYSE listing standards will focus the CEO and senior management on the company's compliance with the listing standards.²⁰

¹⁹ No existing NYSE listing standard requires such a CEO certification. However, a similar certification is required of member organizations in the context of insider trading. See NYSE Rule 351.

²⁰ No existing NYSE listing standard requires a CEO certification to the company's adherence to NYSE listing standards. However, current NYSE listing standards do provide for a similar affirmation by the company each year with respect to its compliance with the NYSE audit committee requirements. See NYSE Listed Company Manual Section 303.02 (Application of Standards), Subsection C (Written Affirmation).

13. Enable the NYSE to issue a public reprimand letter to any listed company that violates an NYSE listing standard.

Suspending trading in or delisting a company can be harmful to the very shareholders that the NYSE listing standards seek to protect; the NYSE must therefore use these measures sparingly and judiciously. We believe that the NYSE should have the ability to apply a lesser sanction to deter companies from violating its corporate governance (or other) listing standards.

The NYSE should be able to issue a public reprimand letter to a company that it determines has violated an NYSE listing standard. For companies that repeatedly or flagrantly violate NYSE listing standards, suspension and delisting remain the ultimate penalties.