

NYSE Listed Company Manual Section 303A
Corporate Governance Listing Standards
Frequently Asked Questions

Updated as of February 13, 2004

Section A - Questions with Respect to Transition Periods

1) When do companies first need to comply with the requirements of Section 303A?

A company's Section 303A compliance date is the earlier of the company's first annual meeting after January 15, 2004 and October 31, 2004. Until its Section 303A compliance date, a company must continue to comply with the pre-existing corporate governance requirements of Section 303.

First published 1/29/04.

2) What are the transition requirements for companies that list on the NYSE in conjunction with an initial public offering after January 15, 2004 but before October 31, 2004?

Section 303A provides companies listing in conjunction with an IPO with a transition period to phase-in compliance with the nominating, compensation and audit committee membership requirements, and to achieve majority board independence. Each committee must begin with at least one independent member, be majority independent within 90 days, and be fully independent in one year, at which time the majority of the board must be independent as well.

The IPO phase-in periods are generally counted from the date the company lists on the NYSE. However, because the Section 303A.06 audit committee requirements are based on SEC Exchange Act Rule 10A-3, the IPO phase-in period for purposes of Section 303A.06 is counted from the date of effectiveness of the company's registration statement relating to the securities being listed.

Example 1 - A company's registration statement is declared effective on January 15, 2004, the company lists on the NYSE on January 16, 2004, and the company does not hold an annual meeting prior to October 31, 2004.

- The company's Section 303A compliance date will be October 31, 2004.
- Until October 31, 2004, the company will be required to satisfy the IPO transition provisions of the pre-existing Section 303 corporate governance standards.
- Because the company's Section 303A compliance date is more than 90 days past the date the company's registration statement was declared effective and the date it listed on the NYSE, the company will be required to have a majority of independent

directors on its audit, nominating and compensation committees as of October 31, 2004.

- The company will have one year from January 15, 2004 (the effective date of its registration statement) to obtain full audit committee independence, and one year from January 16, 2004 (its listing date), to obtain full nominating and compensation committee independence and majority board independence.

Example 2 - A company's registration statement is declared effective on January 15, 2004, the company lists on the NYSE on January 16, 2004, and the company holds its first annual general meeting on March 17, 2004.

- The company's Section 303A compliance date will be March 17, 2004 (its annual meeting date).
- Until March 17, 2004, the company will be required to satisfy the IPO transition provisions of the pre-existing Section 303 corporate governance standards.
- Because the company's Section 303A compliance date is less than 90 days since the company's registration statement was declared effective and the date it listed on the NYSE, the company will be required to have only one independent director on its audit, nominating and compensation committees as of March 17, 2004.
- The company will have 90 days from January 15, 2004 (the effective date of its registration statement) to obtain a majority independent audit committee, and 90 days from January 16, 2004 (its listing date), to obtain majority independent nominating and compensation committees.
- The company will have one year from January 15, 2004 (the effective date of its registration statement) to obtain full audit committee independence. The company will have one year from January 16, 2004 (its listing date) to obtain full nominating and compensation committee independence and majority board independence.

The IPO transition provisions of pre-existing Section 303 requirements are as follows:

- the company must appoint one qualified outside director to the board within three months of its listing date and a second director within 12 months of its listing date;
- the company must establish an audit committee with two qualified members within three months of its listing date and a third member within 12 months of its listing date;
- outside directors and audit committee members must be qualified as set out in Section 303; and
- The company must submit a written affirmation (form is provided) to the NYSE no later than three months after listing date.

First published 1/29/04.

3) What are the transition requirements for companies that are listing in conjunction with their initial public offering after October 31, 2004?

Unless a transition period is provided, a company must be in compliance with all of the requirements of Section 303A as of a company's listing on the Exchange after October 31, 2004. As noted in FAQ A-2, Section 303A provides companies listing in conjunction with an IPO with a transition period to phase-in compliance with the nominating, compensation and audit committee membership requirements, and to achieve majority board independence.

Section 303A requires that a company must have:

- at least one independent director on its nominating, compensation and audit committees as of the date of listing;
- a majority of independent directors on the audit committee within 90 days of its registration statement being declared effective and a majority of independent directors on the nominating and compensation committees within 90 days of its listing date; and
- a fully independent audit committee within one year of the its registration statement being declared effective and fully independent nominating and compensation committees and a majority independent board within one year of its listing date.

First published 1/29/04.

4) Can a listed company avail itself of the IPO transition periods if it is already a reporting company?

A reporting company listing in connection with an IPO of its equity securities may avail itself of the IPO transition periods *other than* transition periods applicable to the requirements of Section 303A.06. This is because the term IPO, or initial public offering, is defined differently by the NYSE and the SEC for purposes of Section 303A. Under Exchange Act Rule 10A-3, incorporated by the NYSE as Section 303A.06, the term IPO applies only to a company that is not previously reporting under the Exchange Act, even when it is listing its equity securities on a U.S. market for the first time. The NYSE, on the other hand, considers the initial listing of a company's equity securities to be the company's initial public offering.

As a result, a previously reporting company must be fully compliant with the Section 303A.06 audit committee requirements as of the date of effectiveness of the registration statement that relates to the equity securities that will be listed. Such company, however, would only be required to have:

- at least one independent director on its nominating and compensation committees as of its listing date;
- a majority of independent directors on those committees within 90 days of listing; and
- a fully independent nominating and compensation committees and a majority independent board within one year of listing.

The other requirements of Section 303A apply to a company as of the date of listing with the NYSE.

First published 1/29/04.

5) Are there IPO transition provisions for closed-end funds?

No, there are no IPO transition periods for closed-end funds. Closed-end funds must be in full compliance with all of the applicable requirements of Section 303A as of the date of listing with the NYSE.

First published 1/29/04.

6) Are there transition provisions for companies or closed-end funds that are transferring to the NYSE from another market?

There are no transition provisions for companies or closed-end funds transferring to the NYSE from another market unless the market on which they were listed did not have the same requirements as the NYSE. In that case, the company or closed end fund will have one year from the date of transfer to comply with any requirement that was not previously applicable.

First published 1/29/04.

7) What are the Section 303A transition periods for foreign private issuers?

As specified in the General Applicability discussion of Section 303A, foreign private issuers are only required to comply with the Section 303A.06 audit committee requirements, the Section 303A.11 disclosure requirement, and the requirement of Section 303A.12(b) that the company provide the NYSE prompt notice if it fails to comply with either of the foregoing.

Foreign private issuers have until July 31, 2005, to comply with the audit committee requirements of Section 303A.06. Sections 303A.11 and 303A.12(b), however, apply to the company as of its Section 303A compliance date as discussed in Question 1. Also, see FAQ H-1 for a discussion of when the company must comply with Section 303A.11.

First published 1/29/04.

8) When does a controlled company have to comply with the requirements of Section 303A once it ceases to be controlled?

A controlled company is exempt from the requirements of Sections 303A.01 (majority of independent directors), 303A.04 (fully independent nominating committee) and 303A.05 (fully independent compensation committee). If a controlled company ceases to be controlled, it is required to have at least one independent director on its nominating and

compensation committees as of the date it ceases to be controlled; a majority of independent directors on those committees within 90 days after it ceases to be controlled; and fully independent nominating and compensation committees and a majority independent board within one year after it ceases to be controlled. In addition, the company will be required to have adopted the requisite committee charters as of the date it ceases to be controlled.

The other requirements of Section 303A apply to a controlled company as of the date of listing with the NYSE and continue to apply after it ceases to be controlled.

First published 1/29/04.

9) Can a company with a classified board that is able to fully or substantially comply with all of the requirements of Section 303A as of the 2004 annual meeting choose not to do so in 2004 but, instead, wait until the 2005 annual meeting to fully comply?

No. Section 303A allows a company with a classified board additional time to change a director “who would not normally stand for election in such annual meeting.” The additional period of time for companies with classified boards is only available for companies that would otherwise be required to replace non-independent directors who are not up for election in 2004 in order to fully comply as of the company’s Section 303A compliance date. If such a company is able to comply by the earlier of the date of such annual meeting and October 31, 2004, by replacing any non-independent directors who would normally stand for election at its 2004 annual meeting, it must comply by such earlier date. In such a situation, the listed company may achieve compliance by adding a sufficient number of independent directors or removing a sufficient number of non-independent directors, or both, from any of the director classes so long as it does so prior to its compliance date.

First published 1/29/04.

Section B - Questions on Disclosure, Certification and Written Affirmation Requirements

1) When is a company required to provide the annual report and proxy disclosures mandated by Section 303A ?

Section 303A requires disclosure as to certain matters in a company’s proxy statement, annual report to shareholders, SEC filings and the company’s corporate web site. Such disclosures encompass independence determinations and matters relating to governance documents, such as committee charters, Corporate Governance Guidelines, the Code of Business Conduct and Ethics and the CEO Certification to the NYSE. The NYSE mandated disclosures are not required in any documents that predate the applicable 2004 Section 303A compliance date. However, companies are welcome to and encouraged to make those disclosures voluntarily whenever it is feasible to do so.

Once the 2004 shareholders' meeting is held, or by October 31, 2004, whichever is sooner, companies must be in full compliance with Section 303A and have appropriately updated web sites that contain the committee charters, the Code of Business Conduct and Ethics and the Corporate Governance Guidelines.

First published 1/29/04.

2) What CEO/CFO certifications filed with the SEC are covered by Section 303A.12(a) and need to be included in a company's annual report to shareholders? Do those certifications need to be fully restated in the annual report?

Section 303A.12(a) covers "any CEO/CFO certifications required to be filed with the SEC regarding the quality of the company's public disclosure." Currently, the only CEO/CFO certification meeting that description is the certification required by Section 302 of the Sarbanes-Oxley Act of 2002. Section 303A.12(a) does not cover (a) the certification required by Section 906 of the Sarbanes-Oxley Act because that certification is furnished to, but not filed with, the SEC, (b) interim Section 302 certifications filed as exhibits to Form 10-Q, or (c) the internal control attestations required by Section 404 of the Sarbanes-Oxley Act.

If a company chooses to distribute a glossy annual report to shareholders rather than a "wrapped" Form 10-K that already includes the Section 302 certification as an exhibit, the company may disclose that it has filed the Section 302 certification as an exhibit to its Form 10-K, instead of including that certification in the glossy annual report. This disclosure requirement is applicable to the next annual report distributed to shareholders after the 2004 annual shareholder meeting, or to annual reports distributed after October 31, 2004, whichever is sooner.

First published 1/29/04.

3) Is the NYSE going to provide a form of the certification required by Section 303A.12(a) and when is it required to be submitted to the NYSE?

Yes, a form of the Section 303A.12(a) CEO certification will be available shortly on our website at www.NYSE.com. The CEO certification is an annual requirement and companies will be required to submit the certification to the NYSE no later than 30 days after the annual shareholder meeting.

Additionally, the company's annual report distributed to shareholders must disclose that the certification has been submitted to the NYSE. This disclosure requirement is applicable to the next annual report distributed to shareholders after the 2004 annual shareholder meeting, or to annual reports distributed after October 31, 2004, whichever

is sooner. We are not prescribing where in the annual report the certification must be disclosed.

First published 1/29/04.

4) Does the NYSE require companies to continue to provide Written Affirmations in addition to the disclosure requirements of Section 303A?

Yes, as part of its compliance program, the NYSE will require that companies provide to the NYSE a Written Affirmation on an annual basis, approximately 30 days after the annual shareholders' meeting. Companies will also be required to submit to the NYSE a shorter form of Written Affirmation on an interim basis each time a director is added to, or removed from, the board. An interim Written Affirmation will also be required each time that a change is made to the composition of the audit, nominating or compensation committees. If the required responsibilities of the nominating/corporate governance committee and/or the compensation committee have been reallocated to any other committees of the board, any changes to the composition of those other committees must also be followed by the submission of an interim Written Affirmation. The forms for both the annual and interim Written Affirmations will be available shortly on the NYSE corporate website at www.NYSE.com.

First published 1/29/04.

5) Are companies required to identify their independent directors by name?

Yes, companies are required to identify their independent directors by name, specify that the board has determined that these directors are independent and discuss the basis for the board's determinations in the annual proxy statement.

First published 1/29/04.

6) Does the requirement of Section 303A.02(b)(v) for proxy statement disclosure of charitable contributions in excess of the stated thresholds apply only with respect to the listed company's independent directors or to all the company's directors?

The disclosure requirement only applies to independent directors.

First published 1/29/04.

7) Is a listed foreign private issuer required to provide any Written Affirmations to the Exchange following its 2004 annual shareholders' meeting?

No. Foreign private issuers are not required to submit any Written Affirmation, annual or interim, until after their 2005 annual shareholders' meeting. After the date of that

meeting, foreign private issuers will be required to provide Written Affirmations to the Exchange in accordance with the requirements of those forms.

First published 2/13/04.

Section C - Questions Regarding Independence Determination

General

1) How does the three-year look back phase-in function?

From November 4, 2003 until November 3, 2004, the Section 303A look back period is a twelve-month period. Beginning on November 4, 2004, the look back period is a three-year period. Consequently it is possible that an individual who is deemed independent during the first year after approval of Section 303A ceases to be independent during the second following approval due to a prior relationship to the listed company.

First published 1/29/04.

2) May a company take the position that any director who satisfies the bright line independence criteria set forth in Section 303A.02(b) is per se independent?

Such a blanket conclusion does not appear to be supportable.

Section 303A.02(a) requires a board to make independence determinations based on all relevant facts and circumstances. Even if a director meets all the bright line criteria set out in Section 303A.02(b), the board is still required under Section 303A.02(a) to make an affirmative determination that the director has no material relationship with the listed company. The criteria in Section 303A.02(b) were not intended to be an exhaustive list of circumstances or relationships that would preclude independence. To state categorically that those five criteria describe all the relationships or circumstances that are material to an independence determination may well raise concerns among shareholders regarding the thoroughness of the board's review of director independence. For these reasons, it does not appear appropriate for a company to take the position as a categorical matter that any director who passes the bright line tests is per se independent, or that all relationships other than those which would disqualify a director from being determined independent under Section 303A.02(b) are per se immaterial.

First published 1/29/04.

3) The commentary to Section 303A.02(b) provides that any reference to a “company” includes its parent or subsidiaries in a consolidated group with the company.

A. If a listed company ceases to be part of a consolidated group with its former parent, from what date do you measure the look-back period for purposes of Section 303A.02(b)?

A relationship that would impair independence under Section 303A.02(b) ends on the date that the listed company ceases to be a part of a consolidated group with its former parent. Accordingly the look-back period should be measured from the date of de-consolidation. For example, if a director is employed by a former parent company of a listed company, the director's employment with a member of the consolidated group is deemed to end as of the date that the listed company ceases to be a part of the former parent's consolidated group, even if the director thereafter continues to be employed by the former parent. As a result, the director could not be deemed independent until three years after the date of de-consolidation.

First published 1/29/04.

B. If a listed company acquires or merges with another company, can an employee of the company not listing its common equity securities on the Exchange following the transaction be deemed independent for purposes of the listed company's board?

A relationship that would impair independence under Section 303A.02(b) does not exist for purposes of that section until a company that employs the director merges with, or becomes a parent or subsidiary of, a listed company. For example, a director who was an employee of a company not listing equity securities on the Exchange following a merger or acquisition transaction would be independent under Section 303A.02(b) if his or her employment relationship ended prior to, or concurrent with, the transaction. However, the prior employment relationship must be considered by the listed company's board under Section 303A.02(a) in evaluating that director's independence.

First published 1/29/04.

C. What does the Exchange mean by the term “consolidated group”?

The term consolidated group refers to a company, its parent or parents, and/or its subsidiaries that would be required under U.S. generally accepted accounting principles to prepare financial statements on a consolidated basis. To the extent that a parent or subsidiary of a listed company is consolidated with the financial statements of the listed company, the bright line tests of Section 303A.02(b) apply to those entities as though they were the listed company.

First published 1/29/04.

Definitions

4) What is the definition of officer or executive officer within the context of Section 303A?

The terms “officer” and “executive officer” have the meaning specified in Rule 16a-1(f) under the Exchange Act, whether or not the company in question is a public company.

First published 1/29/04.

5) Section 303A provides exemptions from the nominating and compensation committee and majority board independence requirements for controlled companies. The term controlled company is defined as a company of which more than 50% of the voting power is held by an individual, group or another company. How does the Exchange define the term “group” in this context?

The Exchange will look to the concept of “group” set out in Section 13(d)(3) of the Exchange Act, and expects that generally a group would have an obligation to file on Schedule 13D or 13G with the SEC acknowledging such group status. The Exchange encourages any company that seeks to claim controlled company status in the absence of such indicia to contact the Exchange.

First published 1/29/04.

6) What does "professional capacity" mean within the context of the auditor independence test as set forth in Section 303A.02(b)(iii)?

Even after recent changes in the accounting industry, independent auditing firms often offer a range of services, not all of which were intended to be covered by the term "professional capacity." The NYSE intends the term "professional capacity" to cover those individuals participating in the firm's audit and assurance and tax compliance (but not tax planning) practices in non-support roles. We were not intending to cover clerical or administrative personnel (whether or not they participate in the audit and assurance or tax compliance practices). While our answer is intended to assist companies in complying with Section 303A.02(b)(iii), we recognize that audit firms may have differing internal organizational structures and personnel designations and there may be situations in which a person's "professional capacity" remains in question. In such situations, we encourage listed companies to contact the Exchange to discuss the particular circumstances in question.

First published 1/29/04.

7) How does the NYSE define the term “public company” for purposes of the Commentary to Section 303A.07(a)?

The NYSE defines the term “public company” to include any company that is registered

with the SEC under Sections 12(b) or 12 (g) of the Exchange Act and subject to the reporting obligations of the Exchange Act.

First published 1/29/04.

Section 303A.02(b)(ii) – the \$100,000 test

8) Should investment income be considered direct compensation for purposes of Section 303A.02(b)(ii)?

Dividend or interest income is investment income and, accordingly, not considered compensation for purposes of Section 303A.02(b)(ii).

First published 1/29/04.

9) Should the reimbursement of expenses be considered direct compensation for purposes of Section 303A.02(b)(ii)?

To the extent that reimbursed expenses are bona fide and documented, such amounts will not be considered direct compensation.

First published 1/29/04.

10) How should listed companies treat severance payments or non-compete arrangements in the context of Section 303A.02(b)(ii)?

When determining whether Section 303A.02(b)(ii) is applicable, the listed company must determine that there is or was an obligation for services by the director. Typically, a severance package or a non-compete arrangement is not contingent upon continued service. However, if the non-compete arrangement is part of, or entered into in connection with a consulting agreement that calls for continued service (even if that service is never rendered), this payment must be considered.

First published 1/29/04.

11) Are payments to an individual's business considered direct compensation under Section 303A.02(b)(ii)?

Section 303A.02(b)(ii) provides that direct compensation (other than director's fees) to a director of a listed company in an amount greater than \$100,000 precludes independence. The Exchange considers payments to an individual's solely owned business entity direct compensation. Whether or not an entity should be considered a solely-owned business is a fact and circumstance determination. Companies are encouraged to consult the Exchange with questions regarding specific fact patterns involving this issue.

First published 1/29/04.

12) What period must be used in applying Section 303A.02(b)(ii) relating to the payment of more than \$100,000 per year in direct compensation and how does that interact with the three-year look-back requirement?

The appropriate inquiry under Section 303A.02(b)(ii) is whether a director or his or her immediate family member has received, during any twelve-month period within the last three years, more than \$100,000 in direct compensation from the listed company (other than director fees and pension or deferred compensation as specified in the rule).

Revised 2/13/04. First published 1/29/04.

Section 303A.02(b)(iii) – the outside auditor test

13) Is a former employee of the current auditor of a consolidated subsidiary of the listed company eligible for board independence under Section 303A.02(b)(iii)?

No. If the subsidiary would be required under U.S. GAAP to be consolidated into the listed company's financial statements, individuals employed in a professional capacity by the current auditor or former employees of the current auditor of the subsidiary can not be deemed independent until the expiration of the applicable look-back period counted from the date the employment or auditor relationship is terminated.

First published 1/29/04.

Section 303A.02(b)(v) – the revenue test

14) Please explain the “current employee” aspect of Section 303A.02(b)(v).

If the director is currently employed by a company that has, or within the past one/three most recently completed fiscal years (as applicable) had, a relationship with a listed company that resulted in payments or receipts in excess of the limits set forth Section 303A.02(b)(v), the director cannot be deemed independent. It does not matter whether that company employed the director at the time the business relationship existed. Once the director's employment ceases, however, the director can be considered to be independent for purposes of Section 303A.02(b)(v), even if the relationship between the two companies continues.

First published 1/29/04.

15) Are loans from financial institutions to listed companies considered “payments” for purposes of Section 303A.02(b)(v)?

Loans from financial institutions are not considered payments for purposes of Section

303A.02(b)(v). Interest payments or other fees paid in association with such loans, however, would be considered payments.

First published 1/29/04.

16) Should companies aggregate payments made to and payments received from the listed company to measure against the director's company's revenues for purposes of Section 303A.02(b)(v)?

No. The director's company should aggregate payments made to the listed company and measure such payments against the consolidated gross revenues of the director's company in each fiscal year of the look back period. Payments received from the listed company should be aggregated separately and measured against the consolidated gross revenues of the director's company in each fiscal year of the look back period.

First published 1/29/04.

17) Does the reference in the Commentary to Section 303A.02(b)(v) to "the last completed fiscal year" mean the last completed fiscal year of the listed company or the last completed fiscal year of the director's company?

Payments and consolidated gross revenues of the director's company for its last completed fiscal year should be measured against the consolidated gross revenues of the director's company's last completed fiscal year. For example, the director's company's payments and revenues in 2003 should be compared to the director's company's consolidated gross revenues in 2003, 2002 payments and revenues should be compared to 2002 consolidated gross revenues and 2001 should be compared to 2001.

First published 1/29/04.

18) The Commentary to Section 303A(b)(v) applies to payments/revenues of the director's company as reported in the last completed fiscal year. In some cases, however, it may be impracticable for the listed company to obtain the most recently completed year-end financial statements of a director's company prior to the printing and distribution of the listed company's proxy statement. In such case, how is Section 303A.02(b)(v) applied?

Companies should use their reasonable best efforts to determine the director's company's expected payments and revenues for the last completed fiscal year, even if final financial statements are not available. However, if the listed company is unable to make a clear determination that the 2%/\$1 million threshold was not crossed by the director's company in that company's last completed fiscal year prior to the date that the listed company's proxy statement is printed and distribution, the listed company should assume that the director is not independent.

First published 1/29/04.

19) Does the reference in the Commentary of Section 303A.02(b)(v) to "the charitable organization's consolidated gross revenues" include gross revenues from all sources (i.e., charitable contributions, ticket sales, investment portfolios and other activities) or is it limited to gross charitable donations?

The reference includes gross revenues from all sources.

First published 1/29/04.

20) Please confirm whether the reference in the Commentary of Section 303A.02(b)(v) to "contributions in any single fiscal year" is a reference to the fiscal year of the charitable organization or that of the listed company.

The term refers to any single completed fiscal year of the charitable organization.

First published 1/29/04.

Section D - Questions on Section 303A.03 - Non-Management Director Communications Requirements

1) What role can the listed company play in facilitating the "direct" communication with non-management directors?

Any employee (including the Corporate Secretary or General Counsel) of the listed company can act as an agent for the non-management directors of the board in facilitating direct communications to the board. In their capacity as agent, the employee could review, sort and summarize the communications. The listed-company employee, however, may not "filter out" any direct communications from being presented to the non-management directors without instruction from the non-management directors (and in such event, any communication that has been filtered out must be made available to any non-management director who wished to review it). It would be inappropriate for an employee of the listed company to make independent decisions with regard to what communications are forwarded to the non-management directors. The non-management directors should establish procedures for how the listed company employee would deal with all direct communications, including if and when such communications should be shared with the listed company's management.

First published 1/29/04.

Section E - Questions on Section 303A.05 - Compensation Committee Requirements

1) Which employees are covered by the term “non-CEO” for purposes of Section 303A.05(b)(i)(B)?

The term “non-CEO” refers to Section 16 officers (as defined in Rule 16a-1(f) of the Exchange Act) **other than** the Chief Executive Officer. Compensation for employees who are not Section 16 officers may be set, but need not be set, by the compensation committee.

First published 1/29/04.

2) May listed companies reassign the responsibilities of the compensation committee to another committee?

Yes, a listed company may redirect the responsibilities of the compensation committee to another committee, provided that such other committee consists solely of independent directors that meet the requirements of Section 303A.02. The charter for such committee must include the provisions that would be required for the compensation committee’s charter that are set forth in Section 303A.05(b).

First published 1/29/04.

Section F - Questions on Section 303A.06 - the Audit Committee Requirements

1) Please discuss the difference between the SEC’s requirements with regard to audit committee financial expert and the NYSE’s audit committee requirements.

Each NYSE listed-company audit committee member must be financially literate or become financially literate within a reasonable period of time after his or her appointment to the audit committee. Additionally, the NYSE requires one member to have “accounting or related financial management expertise.”

As required by the Sarbanes-Oxley Act of 2002, the SEC adopted rules that require companies to disclose whether they have an “audit committee financial expert” on the audit committee and if not, why not. The term “audit committee financial expert” is defined in Item 401(e) of Regulation S-K. Any director who satisfies the SEC’s “audit committee financial expert” definition will be deemed to satisfy the NYSE’s “accounting or related financial management expertise” requirement, although the opposite may not be true.

First published 1/29/04.

2) How is the term immediate family member defined for purposes of Section 303A.06?

The NYSE defines the term “immediate family member” for purposes of Section 303A.02 differently than that term is defined in Rule 10A-3 for audit committee purposes. As a result, companies must apply the NYSE’s definition of immediate family member when evaluating compliance with Section 303A.02, and must apply the Rule 10A-3 definition when evaluating compliance with Section 303A.06.

First published 1/29/04.

3) What independence standards must be met in order for a director to qualify for service on a listed company’s audit committee?

If the individual is the director of a U.S. company that has equity listed on the NYSE, in order to serve on the audit committee, the director must meet all of the independence requirements of Section 303A.02, as well as the audit committee independence requirements of Section 303A.06. If a director fails to meet any of these requirements, he or she cannot be deemed independent for audit committee service.

For other entities, such as foreign private issuers or an U.S. company that lists securities other than equity securities on the NYSE, in order to serve on the audit committee, the director is only required to satisfy the audit committee requirements of Section 303A.06. See the General Applicability section of Section 303A for a discussion of the audit committee requirements applicable to each type of entity listed on the Exchange.

First published 1/29/04.

Section G - Questions on Section 303A.10 – Code of Business Conduct and Ethics Requirements

1) Section 303A.10 requires that any waiver from a company’s code of business conduct and ethics must be promptly disclosed to shareholders. What would constitute prompt notification?

The distribution of a press release within 2–3 business days of a board’s determination to approve any waiver from the company’s code of business conduct and ethics is an example of prompt notification. A company might also choose to provide website disclosure of any waiver, or provide notice to the SEC on Form 8-K. These examples, however, are not intended to provide an exclusive list of alternatives.

First published 1/29/04.

Section H - Questions on Section 303A.11 - Foreign Private Issuer Disclosure

- 1) Section 303A.11 requires that foreign private issuers disclose any significant ways in which their corporate governance practices differ from the NYSE domestic corporate governance standards either in the annual report required by the NYSE to be distributed to U.S. shareholders or on the company's website. If the company chooses to provide the disclosure on its website, when must it do so?**

As of the company's Section 303A compliance date, if the company chooses to include the required disclosure on its website, it must do so promptly after it makes that determination. If the company chooses to include the disclosure in its annual report to shareholders, the disclosure requirement applies to the next annual report distributed to shareholders after the company's 2004 annual shareholder meeting, or to annual reports mailed after October 31, 2004, whichever is sooner.

First published 1/29/04.

- 2) If the company chooses to include the Section 303A.11 disclosure on its website, is it required to update that information on an ongoing basis?**

Yes, to the extent that the disclosure needs to be updated, the company must do so promptly after the change occurs.

First published 1/29/04.

- 3) Can a foreign private issuer opt to comply with domestic corporate governance criteria?**

Yes, if a foreign private issuer chooses to voluntarily comply with the NYSE domestic corporate governance standards, they may do so. However, the foreign private issuer must still comply with Section 303A.11, even if the company only states in its annual report to shareholders that there are no significant differences in its corporate governance practices. If a foreign private issuer wishes to state that there are no differences to disclose, the company must be in full compliance with all of the requirements of Section 303A.

First published 1/29/04.

4) Is the company required to compare the NYSE domestic corporate governance requirements to home country recommended best practices or to the specific practices followed by the company?

The company is required to compare the NYSE domestic corporate governance requirements against the specific practices followed by the company.

First published 1/29/04.

5) What general topics does the Exchange expect foreign private issuers to cover in their Section 303A.11 disclosure statements? Will the Exchange be providing samples of disclosure that the NYSE believes to be appropriate under this requirement?

As indicated in Section 303A.11, companies are expected to provide a brief, general summary of the significant differences between the practices the company follows in its home country and the Section 303A corporate governance requirements applicable to U.S. companies. It would be sufficient for companies to present a point by point comparison of their specific practices against the domestic requirements of Section 303A, but the Exchange is not prescribing the form the disclosure must take. The Exchange will not be providing sample disclosure and expects that each company will develop disclosures appropriate to their own company.

First published 1/29/04.