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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - 2009 - 89

Proposed Rule Change by New York Stock Exchange

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial	Amendment	Withdrawal	Section 19(b)(2)	Section 19(b)(3)(A)	Section 19(b)(3)(B)
☑	☐	☐	☑	☐	☐

Pilot	Extension of Time Period for Commission Action
☐	☐

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Proposed amendments to NYSE Listed Company Manual Sections 303A and 307.00

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name	John	Last Name	Carey
Title	Chief Counsel U.S. Equities		
E-mail	jcarey@nyx.com		
Telephone	(212) 656-5640	Fax	(212) 656-8101

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized officer.

Date 08/26/2009

By Janet Kissane (Name)

Corporate Secretary (Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Janet Kissane, jkissane@nyse.com

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

Exhibit 1 - Notice of Proposed Rule Change

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications

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Exhibit Sent As Paper Document ☐

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

Exhibit 3 - Form, Report, or Questionnaire

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Exhibit Sent As Paper Document ☐

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

Exhibit 4 - Marked Copies

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

Exhibit 5 - Proposed Rule Text

Add Remove View

The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

Partial Amendment

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of the Proposed Rule Change

(a) The text of proposed amendments to NYSE Listed Company Manual Sections 303A and 307.00 are set forth in Exhibit 5. The proposed rule changes reflect amendments relating to the Listed Company Manual's corporate governance requirements.

(b) Except as otherwise noted below, the Exchange does not believe that the proposed rule change will have any direct effect, or any significant indirect effect, on any other Exchange rule in effect at the time of this filing.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

(a) The Board of Directors of New York Stock Exchange, Inc. (the predecessor entity to New York Stock Exchange LLC ("NYSE" or the "Exchange") originally approved these proposed rule changes on April 7, 2005. The Board of Directors of NYSE Regulation, Inc. approved certain additional amendments on April 4, 2007. No further action by the Board of Directors of either the Exchange or NYSE Regulation is required. Therefore, the Exchange's internal procedures with respect to the proposed rule change are complete.

(b) The persons from the Exchange staff prepared to respond to questions and comments on the proposed rule changes are:

Janice O'Neill Senior Vice President Corporate Compliance (212) 656-2407	John Carey Chief Counsel – U.S. Equities Office of the General Counsel (212) 656-5640

3. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(a) Purpose

On November 4, 2003, the U.S. Securities and Exchange Commission (the "SEC") approved Section 303A of the Listed Company Manual. This section imposed significant corporate governance requirements on the Exchange's listed companies and focused mainly on director independence and the duties of the audit, nomination and compensation committees of the board. The Exchange now proposes to amend Section 303A to clarify some of the disclosure requirements,

to codify certain interpretations made since the rules were enacted, and to replace certain disclosure requirements by incorporating into the Exchange's rules the applicable disclosure requirements of Regulation S-K. In addition, the Exchange is proposing to eliminate the current requirements of Section 307.00 and redesignate Section 303A.14 as Section 307.

The proposed changes to Sections 303A and 307.00 will not take effect until January 1, 2010. Consequently, the existing text of these sections will remain in the Listed Company Manual through December 31, 2009 and will be removed immediately thereafter. Upon approval of this filing, the amended versions of those sections will also be included in the Listed Company Manual, with introductory text indicating that the revised text does not become operative until January 1, 2010.

The Exchange proposes to amend references to the "company" throughout Section 303A to the "listed company," wherever the context makes that change appropriate.

The discussion below begins with a description of the proposed approach to corporate governance disclosures, as this approach is adopted consistently in numerous instances throughout Section 303A. There then follows a detailed section-by-section description of all of the other proposed changes.

Corporate Governance Disclosures:

On August 29, 2006, in connection with amendments to its executive compensation and related person disclosure, the SEC adopted Item 407 of Regulation S-K to consolidate director independence and related corporate governance disclosure requirements under a single item and update such disclosure requirements regarding director independence to reflect the SEC's own disclosure requirements, as well as the principal U.S. markets' listing standards.[1] These rules duplicate some of the NYSE's Section 303A corporate governance disclosure requirements. Indeed, in some instances, the SEC's rules require more detailed disclosures than are currently required by Section 303A.

Since the adoption of Item 407, the Exchange has received numerous calls from listed companies requesting guidance from us on whether compliance with the disclosure requirements of Item 407 would also satisfy their obligations under Section 303A. For example, Section 303A.02(a) provides that the board of directors of a listed company may adopt and disclose categorical standards to

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1 See Securities Act Release No. 33-8732A (August 29, 2006).

assist it in making determinations of independence and may make a general disclosure if a director meets these standards. Item 407(a)(3), on the other hand, requires that companies describe by specific category or type, any transactions, relationships or arrangements (other than those disclosed pursuant to Item 404(a) of Regulation S-K) that were considered by the board of directors with respect to each director that is identified as independent. As a result, while Section 303A.02(a) would only require that companies disclose the categories of relationships that were per se deemed to be immaterial with respect to board independence, Item 407(a)(3) goes further, requiring that companies also disclose which directors had relationships that fall into the categorical standards utilized by the board in determining independence.

In an effort to avoid duplication and confusion, the Exchange is proposing to eliminate each disclosure requirement currently included in Section 303A that is also required by Item 407 and to incorporate directly into Section 303A the applicable disclosure requirement of Item 407. The Exchange believes that, since Item 407 requires duplicative or more specific disclosures than Section 303A, such elimination will facilitate compliance for listed companies, while providing investors with significant transparency on corporate governance. While this approach may appear to be redundant, the incorporation of certain requirements of Item 407 into Section 303A serves an important purpose in that companies whose Item 407 disclosure is deficient will be deemed to be out of compliance with Exchange rules. Consequently, the Exchange will be able to take actions against a noncompliant company, ranging from appending a below compliance ("BC") indicator to the company's ticker symbol to issuing a public reprimand letter and, in extreme cases, delisting.

The following are the disclosure items that will be eliminated and the provisions of Item 407 that will be added:

- The Section 303A.00 controlled company exemption disclosure requirement is replaced by a requirement that a controlled company that chooses to take advantage of any or all of the available Section 303A controlled company exemptions must comply with the disclosure requirements in Instruction 1 to Item 407(a).

- The Section 303A.02(a) independent director disclosure requirement is replaced by a requirement that the listed company must comply with the disclosure requirements in Item 407(a).

- The Section 303A.05(b)(i)(C) compensation committee charter requirement to produce a compensation committee report is replaced by a requirement to prepare the disclosure required by Item 407(e)(5).

- The Section 303A.07(c)(i)(B) audit committee charter requirement to prepare an audit committee report is replaced by a requirement to prepare the disclosure required by Item 407(d)(3)(i).

The Exchange is also proposing to move the audit, compensation and nominating committee charter, corporate governance guidelines and code of business conduct and ethics website posting requirements to a new Website Posting Requirement section in each of the applicable subsections of Section 303A. The Website Posting Requirement section of Section 303A.07 will specify that closed-end funds are not subject to the requirement to post their audit committee charter on their website. This is consistent with the Exchange's current practice, as Section 303A.00 specifically exempts closed-end funds from the application of Section 303A.09.

The Exchange is proposing to change the disclosure regarding website postings to just require a listed company to disclose in its annual proxy statement or Form 10-K that the applicable charters, corporate governance guidelines and code of business conduct and ethics are available on the company's website, providing the company's website address. This will conform the Exchange's disclosure requirements with respect to committee charters to the disclosure required by Instruction 2 to Item 407. The Exchange proposes to eliminate the requirement in Sections 303A.09 and 303A.10 that the listed company disclose that hard copies of the charters, guidelines and code are available in print upon request. The Exchange believes that it is unnecessary to require companies to provide physical copies of these documents upon request when they are readily accessible on the company's website.

Section 303A currently contains certain disclosure requirements that require listed companies to make the required disclosures in the company's annual proxy statement, or, if the company does not file an annual proxy statement, in the company's annual report filed with the SEC. The Exchange proposes to amend these requirements so that companies will have the option of either continuing to provide these disclosures in the annual proxy statement or annual report, as applicable, or making the disclosures on or through the company's website. If a company chooses to make the applicable disclosure on or through its website, it must disclose that fact in its annual proxy statement or annual report, as applicable, and provide the website address. The disclosure requirements amended as described in this paragraph are as follows:

- The disclosure requirement of Section 303A.02(b)(v) with respect to contributions made by the listed company to any tax exempt organization in which any independent director serves as an executive officer if, within the preceding three years, contributions in any single fiscal year from the listed company to the organization exceeded the greater of $1 million, or 2% of such tax exempt organization's consolidated gross revenues.

- The disclosure requirement of Section 303A.03 with respect to the identity of the director chosen to preside at executive sessions of non-management or independent directors or, if the same individual is not the presiding director at every meeting, the procedure by which a presiding director is selected for each executive session.

- The requirement of Section 303A.03 that listed companies must disclose a method for interested parties to communicate directly with the presiding director or the non-management or independent directors as a group.

- The disclosure requirement of Section 303A.07(a) with respect to the board's determination that the service of any audit committee member on more than three public company audit committees does not impair the ability of such audit committee member to serve effectively on the listed company's audit committee.

If a listed company makes a required Section 303A disclosure in its annual proxy statement, or if the company does not file an annual proxy statement, in its annual report filed with the SEC, it may incorporate such disclosure by reference from another document that is filed with the SEC to the extent permitted by applicable SEC rules.

Where a listed company has the option of making a required disclosure under Section 303A in an annual report filed with the SEC and is not a company required to file a Form 10-K, a new "Disclosure Requirements" subsection of Section 303A.00 provides that the provision shall be interpreted to mean the annual periodic disclosure form that the listed company does file with the SEC. For example, for a closed-end management company, the appropriate form would be the annual Form N-CSR. This approach is identical to that of the current "References to Form 10-K" subsection of Section 303A.00 which is being eliminated as part of the reorganization of Section 303A.00. The reference in the "References to Form 10-K" subsection of Section 303A.00 to companies that are required to file neither an annual proxy statement or an annual periodic report with the SEC is not carried over into the new "Disclosure Requirements" section, as there are no companies that have disclosure obligations under Section 303A that are not subject to one of these filing requirements.

Section 303A.00 - Introduction:

Under the Exchange's current rules, companies listing in conjunction with an initial public offering ("IPO") are able to phase in their independent audit, nominating and compensation committees, but are required to have one independent director on each committee as of the date of listing. Market practice, however, is that a company does not normally appoint independent directors to its

board in advance of the date it lists on the NYSE. Instead, the initial board meeting is held sometime after the listing date but prior to the date that the transaction closes.

In light of this practice, the Exchange proposes to amend the Introduction section of Section 303A to clarify its requirements by specifying that companies listing in conjunction with an IPO, spin-off or carve-out must be in compliance with the applicable provisions of the SEC's audit committee requirements set forth in Rule 10A-3, which is incorporated into the Exchange's corporate governance rules as Section 303A.06, as of the listing date. The Exchange proposes to define the listing date for these purposes as the date the company's securities first trade on the Exchange (trading may be regular way or when issued). The Exchange is also proposing to require that a company listing in conjunction with its IPO, spin-off or carve-out have a majority of independent members on its audit committee within 90 days of the effective date of its registration statement and a fully independent committee within one year of the effective date of its registration statement.

Section 303A.07(a) requires a company to have a minimum of three members on the audit committee as of the date of listing. As a result, companies on the NYSE that are not required to have a fully independent audit committee until one year from the listing date may be forced to appoint non-independent directors to the audit committee in order to satisfy the three-person minimum. The Exchange proposes in the Introduction section to clarify that companies listing in conjunction with an IPO, spin-off or carve-out may also phase in compliance with the three-person minimum on the following schedule: at least one member by the listing date, at least two members within 90 days of the listing date and at least three members within one year of the listing date. Alternatively, the company may choose to have non-independent directors on the audit committee subject to the independent director phase-in requirements as discussed below.

For purposes of Rule 10A-3, the SEC provides that a company is listing in conjunction with an IPO only to the extent that, immediately prior to the effective date of the registration statement relating to the IPO, the company is not "required to file" periodic reports with the SEC under the Securities Exchange Act of 1934 (the "Exchange Act").[2] The Exchange has been advised by the staff of the SEC that a company that voluntarily files reports under the Exchange Act may be considered an IPO and avail itself of the IPO transitions under Rule 10A-3. The Exchange proposes to clarify that a company that was required to file periodic reports with the SEC prior to listing is precluded from including non-independent directors on its audit committee during the phase-in period.

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2 15 U.S.C. 78a.

The Exchange also proposes to amend the Introduction section to clarify that companies listing in connection with an IPO must:

- satisfy the majority independent board requirement of Section 303A.01, if applicable, within one year of the listing date.

- satisfy the website posting requirements of Sections 303A.04, 303A.05, 303A.07(b), 303A.09 and 303A.10, to the extent such sections are applicable, by the earlier of the date the initial public offering closes or five business days from the listing date.

- have at least one independent member on its nominating committee and at least one independent member on its compensation committee as required by Sections 303A.04 and 303A.05, if applicable, by the earlier of the date the initial public offering closes or five business days from the listing date, at least a majority of independent members on each committee within 90 days of the listing date and fully independent committees within one year of the listing date.

The Exchange proposes to amend the Introduction section to clarify that companies listing in conjunction with a carve-out or spin-off transaction must:

- satisfy the majority independent board requirement of Section 303A.01, if applicable, within one year of the listing date.

- satisfy the website posting requirements of Sections 303A.04, 303A.05, 303A.07(b), 303A.09 and 303A.10, to the extent such sections are applicable, by the date the transaction closes.

- have at least one independent member on its nominating committee and at least one independent member on its compensation committee as required by Sections 303A.04 and 303A.05, if applicable, by the date the transaction closes, at least a majority of independent members on each committee within 90 days of the listing date and fully independent committees within one year of the listing date.

In addition, the Exchange proposes to include sections detailing the compliance requirements applicable to a company that (i) lists upon emergence from bankruptcy; (ii) transfers from another market; (iii) ceases to be a controlled company; or (iv) ceases to be a foreign private issuer.

Companies that list upon emergence from bankruptcy will be able to phase in majority independent boards and independent nominating and compensation committees on the same schedule as companies listing in conjunction with an

IPO. The applicable compliance dates, however, will run from the listing date. A company listing upon emergence from bankruptcy will be required to have a fully compliant audit committee at the time of listing unless an exemption is available to it under Rule 10A-3.

Currently, the rule provides that companies listing upon transfer from another market have one year from the date of transfer in which to comply with any requirement to the extent the market on which they were listed did not have the same requirement. The Exchange proposes to amend this section to apply only to companies registered pursuant to Section 12(b) of the Exchange Act that transfer to the NYSE. If the other exchange had a substantially similar requirement and the company was afforded a transition period that had not expired, the company will have the same transition period as would have been available to it on the other exchange.

Companies registered pursuant to Section 12(g) of the Exchange Act that transfer to the NYSE would not have been subject to corporate governance standards at the time of transfer. Therefore, the Exchange believes that it would not be appropriate for such companies to have 12 months to comply with every aspect of the Exchange's corporate governance rules. Instead, the Exchange proposes to treat such companies like a company listing in connection with an IPO. The applicable compliance dates, however, would run from the listing date and since such companies were required to file periodic reports with the SEC prior to listing, only independent directors would be permitted on the audit committee during the transition period.

Companies that cease to be controlled companies will be able to phase in majority independent boards and independent nominating and compensation committees on the same schedule as companies listing in conjunction with an IPO. The applicable compliance dates, however, will run from the date that the company's status changed.

The Exchange also proposes to clarify its requirements as to when a company is a controlled company. The Exchange's current rule defines a controlled company as a listed company of which more than 50% of the voting power is held by an individual, group or another company. Since Section 303A was approved in 2003, the Exchange has had a number of inquiries as to what constitutes a "group" for purposes of the controlled company definition. It also came to the Exchange's attention that some companies were claiming to be owned by a "group" where a shareholder agreement existed relating only to the disposition of assets. The Exchange proposes, therefore, to make it clear that, in order to be deemed a controlled company, more than 50% of the voting power for the election of directors must be held by an individual, group or another company.

When a foreign private issuer ceases to qualify as such under SEC rules (so that it is required to file on domestic forms with the SEC), it may become subject to a number of requirements under Section 303A that it was not previously subject to if its home country practice differed from the applicable requirements of Section 303A. Depending upon the type of issuer, these may include the requirement to have independent nominating and compensation committees and a majority of independent directors. In addition, the company's directors may be required to meet the Section 303A.02 definition of independence, including with respect to their existing audit committee members. The Exchange proposes to modify its rules to take into consideration recent changes in Rule 3b-4[3] of the Exchange Act which enables a foreign private issuer to test its eligibility once a year. Specifically, the Exchange proposes to require a company that ceases to be a foreign private issuer to be in compliance with the domestic company requirements of Section 303A as follows:

- The company must satisfy the majority independent board requirement of Section 303A.01, if applicable, within six months of the date it fails to qualify for foreign private issuer status pursuant to SEC Rule 240.3b-4. Under SEC Rule 240.3b-4, a company tests its status as a foreign private issuer on an annual basis at the end of its most recently completed second fiscal quarter (the "Determination Date").

- The company must satisfy the website posting requirements of Sections 303A.04, 303A.05, 303A.07(b), 303A.09 and 303A.10, to the extent such sections are applicable, within six months of the Determination Date.

- The company must have fully independent nominating and compensation committees as required by Sections 303A.04 and 303A.05, if applicable, within six months of the Determination Date.

- The company's audit committee members must be in compliance with the independence requirements of Section 303A.02, if applicable, within six months of the Determination Date.

- The company must comply with the three-person audit committee requirement of Section 303A.07(a) within six months of the Determination Date.

- The company must comply with the shareholder approval requirements of Section 303A.08 by the Determination Date, subject to the provisions in

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[3] 17 CFR 240.3b-4.

Section 303A.08 under the heading "Ongoing Transition Period for a Foreign Private Issuer Whose Status Changes."

Prior to the amendment of Sections 203.01 and 103 in August 2006,[4] Section 203.01 required listed companies to distribute to their shareholders each year an annual report containing audited financial statements. Section 103 permitted foreign private issuers to distribute a summary annual report in fulfillment of their obligations under Section 203.01. As amended, Sections 203.01 and 103 no longer require the physical distribution of annual reports. Instead, companies are required to post their annual report filed with the SEC on or through their website. The Exchange proposes to conform Section 303A to these amendments by eliminating from Section 303A all references to annual reports previously required under Section 203.01 and summary annual reports previously permitted under Section 103.

The Exchange also proposes to revise the Introduction section to more clearly specify which issuers are required to comply with Section 303A.08 and to delete the section relating to effective dates due to the fact that the rules are fully applicable, other than for the specified transition periods. The Exchange notes that it proposes to clarify that closed-end funds are subject to Section 303A.08. The fact that Section 303A.00 does not currently appear to require closed-end funds to comply with Section 303A.08 results from an oversight on the part of the Exchange.

The Exchange is adding a reference in the "Preferred and Debt Listings" subsection of the Introduction section to specify that, except as otherwise provided by Rule 10A-3 under the Exchange Act, Section 303A does not apply to securities listed under Section 703.22 ("Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities") of the Listed Company Manual. Section 703.22 had not yet been adopted at the time that Section 303A.00 was adopted. Securities listed under Section 703.22 are debt securities and, as companies listing only debt securities on the Exchange are generally not subject to Section 303A, the Exchange believes it is consistent to adopt the same approach with issuers of securities listed under Section 703.22. In addition, the Exchange proposes to move the reference to securities listed under Section 703.21 ("Equity-linked Debt Securities") from the "Other Entities" subsection of the Introduction section to the "Preferred and Debt Listings" subsection, as securities listed under Section 703.21 are debt securities and are

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4 See Securities Exchange Act Release No. 54344 (August 21, 2006); 71 FR 51260 (August 29, 2006) (SR-NYSE-2005-68).

more properly subject to the corporate governance requirements applicable to debt securities. To the extent that Rule 10A-3 applies to the issuer of a security listed under either Section 703.21 or Section 703.22, such issuer will be required to comply with Sections 303A.06 and 303A.12(b). The Exchange also proposes to delete the reference to Section 703.16 ("Investment Company Units", more commonly referred to as "Exchange-Traded Funds" or "ETFs") in the "Other Entitites" subsection as ETFs are covered by the "Closed-End and Open-End Funds" subsection of the Introduction section.

The "Closed-End and Open-End Fund" subsection of the "Introduction" section is amended to clarify the requirements applicable to closed-end funds. Closed-end funds must comply with the requirements of Sections 303A.06, 303A.07(a), 303A.07(b), 303A.08 and 303A.12 with the following exceptions:

- A closed-end fund is not required to comply with the director independence requirements of Section 303A.02 incorporated into Section 303A.07(a) (this exemption already exists in the current rule, but the Exchange is proposing to move the requirement to comply with the director independence requirements of Section 303A.02 from its current position in Section 303A.07(b) to Section 303A.07(a), requiring a conforming change in the "Closed-End and Open-End Fund" subsection of the "Introduction" section. A similar conforming change is required in the paragraph discussing Business Development Companies).

- Closed-end funds are not required to comply with the Disclosure Requirements in Section 303A.07(a), when a director serves on multiple boards in the same fund complex as such service will be counted as one board for purposes of Section 303A (this exemption is already in the "Closed-End and Open-End Fund" subsection of the "Introduction" section).

- A closed-end fund is not required to make the audit committee charter required by Section 303A.07(b) available on or through its website (this specifies the existence of an exemption that is implicit in the current rule).

Section 303A.02 – Independence Requirements:

The Exchange proposes to revise the General Commentary to Section 303A.02(b) to clarify that references to a listed company or any other company relevant to the independence standards of Section 303A.02(b) include any parent or subsidiary in a consolidated group with such company.

The Exchange proposes to delete the "Transition Rule" subsection of Section 303A.02(b) as the transition period has ended.

Section 303A.03 - Requirement for meetings of non-management directors:

The Exchange's current rule requires that listed companies hold regular meetings of non-management directors and recommends that companies schedule a meeting of independent directors at least once a year. Some companies have expressed a preference to holding regular executive sessions of just independent directors. The Exchange believes that allowing companies to hold regular executive sessions of independent directors satisfies the original intention of the rule, so the Exchange proposes to revise the Commentary accordingly.

The Exchange is also proposing to clarify the fact that all interested parties, not only shareholders, must be able to communicate their concerns regarding the listed company to the presiding director, or the non-management or independent directors as a group.

Section 303A.05 – Requirements for Compensation Committees:

The current responsibilities designated to the compensation committee include the review and approval of corporate goals, objectives, and the CEO's performance as they relate to CEO compensation. The committee also makes recommendations to the board regarding compensation of non-CEO executive officers.

The Exchange proposes to update the current requirement for the compensation committee to produce a report to reflect the disclosure required by Item 407(e)(5) of Regulation S-K regarding compensation of executive officers.

Section 303A.06 – Requirements for Audit Committees:

In an effort to highlight listed companies' disclosure requirements, the Exchange proposes to revise the Commentary to Section 303A.06 to specifically point out that Rule 10A-3 requires disclosure of reliance on certain exceptions contained in that rule.

Section 303A.07 – Duties of the Audit Committee:

The Exchange is proposing to combine the Section 303A.07(a) requirement for a listed company to have an audit committee comprised of minimum of three members with the Section 303A.07(b) requirement that such audit committee members must meet the independence standards set forth in Section 303A.02 and, in the absence of an applicable exemption, Rule 10A-3 and to renumber the remaining parts of Section 303A.07.

In addition, Section 303A.07(a) currently requires that, if an audit committee member simultaneously 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 to three or less, 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 must disclose such determination. The current language has led to some confusion that disclosure is only required to the extent that the listed company does not limit the number of audit committees on which its audit committee members serve to three or less. The Exchange proposes to amend the language to make clear that the mandated disclosure is required to the extent that an audit committee member simultaneously serves on the audit committees of more than three public companies.

Section 303A.07 requires that a company's audit committee charter must provide that the audit committee will meet to review and discuss the company's financial statements and must review the company's specific Management's Discussion and Analysis disclosures. Closed-end funds, however, are not subject to the requirement to provide this disclosure. The Exchange proposes to add language to the Commentary to make clear that, if a closed-end fund chooses to *voluntarily* include a "Management's Discussion of Fund Performance" in its Form N-CSR, its audit committee is required to meet to review and discuss it. The Exchange also intends to clarify that telephonic conference calls constitute meetings for purposes of Section 303A.07 if allowed by applicable corporate law, but that polling directors is not allowed in lieu of a meeting.

The Exchange proposes to update the current requirement for the audit committee to produce a report to reflect the disclosure required by Item 407(d)(3)(i).

Section 303A.08 – Shareholder Approval of Equity Compensation Plans:

The Exchange proposes to revise the "Transition Rules" section of this item to specify that the effective date of this listing standard was June 30, 2003 and to eliminate references to transitional provisions that are no longer relevant in light of the expiration of the specified transition periods.

To the extent that a listed foreign private issuer ceases to qualify as such under SEC rules (so that it is required to file on domestic forms with the SEC) and as a result of such change in status becomes subject to Section 303A.08 for the first time, such company will be granted a limited transition period with respect to discretionary plans and formula plans that do not comply with Section 303A.08 that were in place prior to the date that its status changed so that additional grants may be made after the date that its status changed without shareholder approval. This transition period will end upon the later to occur of:

- six months after the date as of which the company fails to qualify for foreign private issuer status pursuant to SEC Rule 240.3b-4. Under SEC Rule 240.3b-4, a company tests its status as a foreign private issuer on an

annual basis at the end of its most recently completed second fiscal quarter (the "Determination Date"); and

- the first annual meeting after the Determination Date,

but, in any event no later than one year after the Determination Date.

A shareholder-approved formula plan may continue to be used after the end of this transition period if it is amended to provide for a term of ten years or less from the date of its original adoption or, if later, the date of its most recent shareholder approval. Such an amendment may be made before or after the Determination Date, and would not itself be considered a "material revision" requiring shareholder approval.

In addition, a formula plan may continue to be used, without shareholder approval, if the grants after the date that the company's status changed are made only from the shares available immediately before the Determination Date, in other words, based on formulaic increases that occurred prior to the Determination Date.

A shareholder-approved formula plan may continue to be used after the end of this transition period if it is amended to provide for a term of ten years or less from the date of its original adoption or, if later, the date of its most recent shareholder approval. Such an amendment may be made before or after the date that the company's status changed, and would not itself be considered a "material revision" requiring shareholder approval.

In addition, a formula plan may continue to be used, without shareholder approval, if the grants after the date that the company's status changed are made only from the shares available immediately before the date that the company's status changed, in other words, based on formulaic increases that occurred prior to the date that the company's status changed.

Section 303A.10 – Code of Business Conduct and Ethics:

Section 303A.10 requires that listed companies disclose any waiver of the code of business conduct and ethics granted to executive officers and directors. The Exchange proposes to specify that the waiver must be disclosed to shareholders within four business days of such determination and that disclosure must be made by distributing a press release, providing website disclosure, or by filing a current report on Form 8-K with the SEC. This proposed approach varies slightly from the guidance currently provided by Question G-1 of the NYSE's Frequently Asked Questions on Section 303A, which provides that the waiver must be disclosed to shareholders within two to three business days of the board's determination. The Exchange is proposing a four-day period to be uniform with

the requirements of Item 5.05 of Form 8-K regarding disclosure of waivers from codes of ethics and will revise the answer in the FAQs accordingly.

Section 303A.11 – Foreign Private Issuer Disclosure:

Section 303A.11 requires that foreign private issuers disclose the significant differences between the corporate governance practices followed by the company in its home country and the requirements of Section 303A applicable to U.S. companies. Currently, companies have a choice to make that disclosure either in their annual report to shareholders or on their corporate websites. Under Item 16G of Form 20-F (which became effective for filings relating to fiscal years ending on or after December 15, 2008), foreign private issuers that file their annual report on Form 20-F are now required to include the disclosure of significant differences in the Form 20-F. Therefore, to avoid confusing and duplicative requirements, the Exchange proposes to require foreign private issuers that are required to file an annual report on Form 20-F with the SEC to include the statement of significant differences in that annual report. All other foreign private issuers will have the choice to either (i) include the statement of significant differences in an annual report filed with the SEC or (ii) make the statement of significant differences available on or through the company's website. If the statement of significant differences is made available on or through the company's website, the company must disclose that fact in its annual report filed with the SEC and provide the website address.

Section 303A.12 – Certification Requirements:

Currently, Section 303A.12(a) requires that listed companies disclose that they filed the CEO certification required by the NYSE and any certifications required by the SEC in the following year's annual report. This requirement has caused significant confusion due to the fact that it relates to filings that were made in the previous year. The Exchange proposes to eliminate this disclosure requirement in light of several factors. First, the Exchange notes that at the time the Section 303A.12(a) disclosure requirement was adopted, the SEC had not yet amended the exhibit requirements of Form 10-K to require that the SEC certification be included as an exhibit to the company's annual report filed with the SEC. The Exchange also notes that with respect to disclosure on whether a company submitted a qualified annual written affirmation to the NYSE during the previous year, investors now have timely notification of all material non-compliance with the NYSE's listing standards due to the SEC's amended requirements relating to Form 8-K filings (Item 3.01 of Form 8-K requires registrants to file a Form 8-K disclosing any noncompliance with Exchange rules and any action or response that, at the time of filing, the registrant has determined to take regarding its noncompliance, within four business days of either (i) notification by the Exchange of the registrant's noncompliance with an Exchange rule or (ii) notification by the registrant to the Exchange that the registrant is aware of a

material noncompliance with an Exchange rule). In addition, the NYSE has a program of appending a below compliance ("BC") indicator to the ticker symbol of an issuer that is non-compliant with the Exchange's corporate governance standards. In light of the above, the Exchange has reevaluated the benefit of its current disclosure requirements and believes that disclosure regarding the previous year's compliance is unnecessary.

The Exchange is also proposing to revise Section 303A.12(b) to specify that listed companies must notify the Exchange in writing after any executive officer of the listed company becomes aware of any non-compliance with Section 303A, as opposed to requiring notification in the event of "material non-compliance" as provided by the current rule.

Section 303A.14 – Website requirement:

Listed companies have expressed confusion regarding the placement within Section 303A of the requirement contained in Section 303A.14 that each listed company must maintain a publicly-accessible website. As a result, the Exchange proposes to redesignate Section 303A.14 as Section 307.00 and to clarify in the commentary that this requirement applies to companies subject to website posting requirements under any applicable provision of the Listed Company Manual, rather than just Section 303A. Section 307 will specify that companies' websites must be accessible from the United States, must clearly indicate in the English language the location of the documents on the website that are required to be posted and such documents must be printable in the English language.

Section 307.00 :

Section 307.00 of the Listed Company Manual sets out guidance regarding related party transactions. As this guidance is duplicative of Section 314 ("Related Party Transactions"") and is therefore redundant, the Exchange proposes to eliminate Section 307.

(b) Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5)[5] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

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[5] 15 U.S.C. 78f(b)(5).

principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

The Exchange does not consent to an extension of the time period specified in Section 19(b)(2)[6] of the Act.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

Not applicable.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

This proposed rule change is not based on the rules of another self-regulatory organization or of the Commission.

9. Exhibits

Exhibit 1 - Form of Notice for Publication in the Federal Register.

Exhibit 5 – Text of the Proposed Rule Change

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[6] 15 U.S.C. 78s(b)(2).

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34- ; File No. SR-NYSE-2009-89)

[Date]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange LLC Amending Certain of its Corporate Governance Requirements.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b-4 thereunder,[3] notice is hereby given that, on August 26, 2009, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain of its corporate governance requirements set forth in Section 303A of the Listed Company Manual (the "Manual").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those

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1 15 U.S.C.78s(b)(1).

2 15 U.S.C. 78a.

3 17 CFR 240.19b-4.

statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 4, 2003, the U.S. Securities and Exchange Commission (the "SEC") approved Section 303A of the Listed Company Manual. This section imposed significant corporate governance requirements on the Exchange's listed companies and focused mainly on director independence and the duties of the audit, nomination and compensation committees of the board. The Exchange now proposes to amend Section 303A to clarify some of the disclosure requirements, to codify certain interpretations made since the rules were enacted, and to replace certain disclosure requirements by incorporating into the Exchange's rules the applicable disclosure requirements of Regulation S-K. In addition, the Exchange is proposing to eliminate the current requirements of Section 307.00 and redesignate Section 303A.14 as Section 307.

The proposed changes to Sections 303A and 307.00 will not take effect until January 1, 2010. Consequently, the existing text of these sections will remain in the Listed Company Manual through December 31, 2009 and will be removed immediately thereafter. Upon approval of this filing, the amended versions of those sections will also be included in the Listed Company Manual, with introductory text indicating that the revised text does not become operative until January 1, 2010.

The Exchange proposes to amend references to the "company" throughout Section 303A to the "listed company," wherever the context makes that change

appropriate.

The discussion below begins with a description of the proposed approach to corporate governance disclosures, as this approach is adopted consistently in numerous instances throughout Section 303A. There then follows a detailed section-by-section description of all of the other proposed changes.

Corporate Governance Disclosures:

On August 29, 2006, in connection with amendments to its executive compensation and related person disclosure, the SEC adopted Item 407 of Regulation S-K to consolidate director independence and related corporate governance disclosure requirements under a single item and update such disclosure requirements regarding director independence to reflect the SEC's own disclosure requirements, as well as the principal U.S. markets' listing standards.[4] These rules duplicate some of the NYSE's Section 303A corporate governance disclosure requirements. Indeed, in some instances, the SEC's rules require more detailed disclosures than are currently required by Section 303A.

Since the adoption of Item 407, the Exchange has received numerous calls from listed companies requesting guidance from us on whether compliance with the disclosure requirements of Item 407 would also satisfy their obligations under Section 303A. For example, Section 303A.02(a) provides that the board of directors of a listed company may adopt and disclose categorical standards to assist it in making determinations of independence and may make a general disclosure if a director meets these standards. Item 407(a)(3), on the other hand, requires that companies describe by specific category

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[4] See Securities Act Release No. 33-8732A (August 29, 2006).

or type, any transactions, relationships or arrangements (other than those disclosed pursuant to Item 404(a) of Regulation S-K) that were considered by the board of directors with respect to each director that is identified as independent. As a result, while Section 303A.02(a) would only require that companies disclose the categories of relationships that were per se deemed to be immaterial with respect to board independence, Item 407(a)(3) goes further, requiring that companies also disclose which directors had relationships that fall into the categorical standards utilized by the board in determining independence.

In an effort to avoid duplication and confusion, the Exchange is proposing to eliminate each disclosure requirement currently included in Section 303A that is also required by Item 407 and to incorporate directly into Section 303A the applicable disclosure requirement of Item 407. The Exchange believes that, since Item 407 requires duplicative or more specific disclosures than Section 303A, such elimination will facilitate compliance for listed companies, while providing investors with significant transparency on corporate governance. While this approach may appear to be redundant, the incorporation of certain requirements of Item 407 into Section 303A serves an important purpose in that companies whose Item 407 disclosure is deficient will be deemed to be out of compliance with Exchange rules. Consequently, the Exchange will be able to take actions against a noncompliant company, ranging from appending a below compliance ("BC") indicator to the company's ticker symbol to issuing a public reprimand letter and, in extreme cases, delisting.

The following are the disclosure items that will be eliminated and the provisions of Item 407 that will be added:

- The Section 303A.00 controlled company exemption disclosure requirement is replaced by a requirement that a controlled company that chooses to take advantage of any or all of the available Section 303A controlled company exemptions must comply with the disclosure requirements in Instruction 1 to Item 407(a).

- The Section 303A.02(a) independent director disclosure requirement is replaced by a requirement that the listed company must comply with the disclosure requirements in Item 407(a).

- The Section 303A.05(b)(i)(C) compensation committee charter requirement to produce a compensation committee report is replaced by a requirement to prepare the disclosure required by Item 407(e)(5).

- The Section 303A.07(c)(i)(B) audit committee charter requirement to prepare an audit committee report is replaced by a requirement to prepare the disclosure required by Item 407(d)(3)(i).

The Exchange is also proposing to move the audit, compensation and nominating committee charter, corporate governance guidelines and code of business conduct and ethics website posting requirements to a new Website Posting Requirement section in each of the applicable subsections of Section 303A. The Website Posting Requirement section of Section 303A.07 will specify that closed-end funds are not subject to the requirement to post their audit committee charter on their website. This is consistent with the Exchange's current practice, as Section 303A.00 specifically exempts closed-end funds from the application of Section 303A.09.

The Exchange is proposing to change the disclosure regarding website postings to just require a listed company to disclose in its annual proxy statement or Form 10-K that the applicable charters, corporate governance guidelines and code of business conduct and ethics are available on the company's website, providing the company's website address. This will conform the Exchange's disclosure requirements with respect to committee charters to the disclosure required by Instruction 2 to Item 407. The Exchange

proposes to eliminate the requirement in Sections 303A.09 and 303A.10 that the listed company disclose that hard copies of the charters, guidelines and code are available in print upon request. The Exchange believes that it is unnecessary to require companies to provide physical copies of these documents upon request when they are readily accessible on the company's website.

Section 303A currently contains certain disclosure requirements that require listed companies to make the required disclosures in the company's annual proxy statement, or, if the company does not file an annual proxy statement, in the company's annual report filed with the SEC. The Exchange proposes to amend these requirements so that companies will have the option of either continuing to provide these disclosures in the annual proxy statement or annual report, as applicable, or making the disclosures on or through the company's website. If a company chooses to make the applicable disclosure on or through its website, it must disclose that fact in its annual proxy statement or annual report, as applicable, and provide the website address. The disclosure requirements amended as described in this paragraph are as follows:

- The disclosure requirement of Section 303A.02(b)(v) with respect to contributions made by the listed company to any tax exempt organization in which any independent director serves as an executive officer if, within the preceding three years, contributions in any single fiscal year from the listed company to the organization exceeded the greater of $1 million, or 2% of such tax exempt organization's consolidated gross revenues.

- The disclosure requirement of Section 303A.03 with respect to the identity of the director chosen to preside at executive sessions of non-management or independent directors or, if the same individual is not the presiding director at every meeting, the procedure by which a presiding director is selected for each executive session.

- The requirement of Section 303A.03 that listed companies must disclose a method for interested parties to communicate directly with the presiding director or the non-management or independent directors as a group.

- The disclosure requirement of Section 303A.07(a) with respect to the board's determination that the service of any audit committee member on more than three public company audit committees does not impair the ability of such audit committee member to serve effectively on the listed company's audit committee.

If a listed company makes a required Section 303A disclosure in its annual proxy statement, or if the company does not file an annual proxy statement, in its annual report filed with the SEC, it may incorporate such disclosure by reference from another document that is filed with the SEC to the extent permitted by applicable SEC rules.

Where a listed company has the option of making a required disclosure under Section 303A in an annual report filed with the SEC and is not a company required to file a Form 10-K, a new "Disclosure Requirements" subsection of Section 303A.00 provides that the provision shall be interpreted to mean the annual periodic disclosure form that the listed company does file with the SEC. For example, for a closed-end management company, the appropriate form would be the annual Form N-CSR. This approach is identical to that of the current "References to Form 10-K" subsection of Section 303A.00 which is being eliminated as part of the reorganization of Section 303A.00. The reference in the "References to Form 10-K" subsection of Section 303A.00 to companies that are required to file neither an annual proxy statement or an annual periodic report with the SEC is not carried over into the new "Disclosure Requirements" section, as there are no companies that have disclosure obligations under Section 303A that are not subject to one of these filing requirements.

Section 303A.00 - Introduction:

Under the Exchange's current rules, companies listing in conjunction with an initial public offering ("IPO") are able to phase in their independent audit, nominating and compensation committees, but are required to have one independent director on each committee as of the date of listing. Market practice, however, is that a company does not normally appoint independent directors to its board in advance of the date it lists on the NYSE. Instead, the initial board meeting is held sometime after the listing date but prior to the date that the transaction closes.

In light of this practice, the Exchange proposes to amend the Introduction section of Section 303A to clarify its requirements by specifying that companies listing in conjunction with an IPO, spin-off or carve-out must be in compliance with the applicable provisions of the SEC's audit committee requirements set forth in Rule 10A-3, which is incorporated into the Exchange's corporate governance rules as Section 303A.06, as of the listing date. The Exchange proposes to define the listing date for these purposes as the date the company's securities first trade on the Exchange (trading may be regular way or when issued). The Exchange is also proposing to require that a company listing in conjunction with its IPO, spin-off or carve-out have a majority of independent members on its audit committee within 90 days of the effective date of its registration statement and a fully independent committee within one year of the effective date of its registration statement.

Section 303A.07(a) requires a company to have a minimum of three members on the audit committee as of the date of listing. As a result, companies on the NYSE that are not required to have a fully independent audit committee until one year from the listing

date may be forced to appoint non-independent directors to the audit committee in order to satisfy the three-person minimum. The Exchange proposes in the Introduction section to clarify that companies listing in conjunction with an IPO, spin-off or carve-out may also phase in compliance with the three-person minimum on the following schedule: at least one member by the listing date, at least two members within 90 days of the listing date and at least three members within one year of the listing date. Alternatively, the company may choose to have non-independent directors on the audit committee subject to the independent director phase-in requirements as discussed below.

For purposes of Rule 10A-3, the SEC provides that a company is listing in conjunction with an IPO only to the extent that, immediately prior to the effective date of the registration statement relating to the IPO, the company is not "required to file" periodic reports with the SEC under the Act. The Exchange has been advised by the staff of the SEC that a company that voluntarily files reports under the Act may be considered an IPO and avail itself of the IPO transitions under Rule 10A-3. The Exchange proposes to clarify that a company that was required to file periodic reports with the SEC prior to listing is precluded from including non-independent directors on its audit committee during the phase-in period.

The Exchange also proposes to amend the Introduction section to clarify that companies listing in connection with an IPO must:

- satisfy the majority independent board requirement of Section 303A.01, if applicable, within one year of the listing date.
- satisfy the website posting requirements of Sections 303A.04, 303A.05, 303A.07(b), 303A.09 and 303A.10, to the extent such sections are applicable, by the earlier of the date the initial public offering closes or five business days from the listing date.

- have at least one independent member on its nominating committee and at least one independent member on its compensation committee as required by Sections 303A.04 and 303A.05, if applicable, by the earlier of the date the initial public offering closes or five business days from the listing date, at least a majority of independent members on each committee within 90 days of the listing date and fully independent committees within one year of the listing date.

The Exchange proposes to amend the Introduction section to clarify that companies listing in conjunction with a carve-out or spin-off transaction must:

- satisfy the majority independent board requirement of Section 303A.01, if applicable, within one year of the listing date.

- satisfy the website posting requirements of Sections 303A.04, 303A.05, 303A.07(b), 303A.09 and 303A.10, to the extent such sections are applicable, by the date the transaction closes.

- have at least one independent member on its nominating committee and at least one independent member on its compensation committee as required by Sections 303A.04 and 303A.05, if applicable, by the date the transaction closes, at least a majority of independent members on each committee within 90 days of the listing date and fully independent committees within one year of the listing date.

In addition, the Exchange proposes to include sections detailing the compliance requirements applicable to a company that (i) lists upon emergence from bankruptcy; (ii) transfers from another market; (iii) ceases to be a controlled company; or (iv) ceases to be a foreign private issuer.

Companies that list upon emergence from bankruptcy will be able to phase in majority independent boards and independent nominating and compensation committees on the same schedule as companies listing in conjunction with an IPO. The applicable compliance dates, however, will run from the listing date. A company listing upon emergence from bankruptcy will be required to have a fully compliant audit committee at the time of listing unless an exemption is available to it under Rule 10A-3.

Currently, the rule provides that companies listing upon transfer from another market have one year from the date of transfer in which to comply with any requirement to the extent the market on which they were listed did not have the same requirement. The Exchange proposes to amend this section to apply only to companies registered pursuant to Section 12(b) of the Act that transfer to the NYSE. If the other exchange had a substantially similar requirement and the company was afforded a transition period that had not expired, the company will have the same transition period as would have been available to it on the other exchange.

Companies registered pursuant to Section 12(g) of the Act that transfer to the NYSE would not have been subject to corporate governance standards at the time of transfer. Therefore, the Exchange believes that it would not be appropriate for such companies to have 12 months to comply with every aspect of the Exchange's corporate governance rules. Instead, the Exchange proposes to treat such companies like a company listing in connection with an IPO. The applicable compliance dates, however, would run from the listing date and since such companies were required to file periodic reports with the SEC prior to listing, only independent directors would be permitted on the audit committee during the transition period.

Companies that cease to be controlled companies will be able to phase in majority independent boards and independent nominating and compensation committees on the same schedule as companies listing in conjunction with an IPO. The applicable compliance dates, however, will run from the date that the company's status changed.

The Exchange also proposes to clarify its requirements as to when a company is a controlled company. The Exchange's current rule defines a controlled company as a

listed company of which more than 50% of the voting power is held by an individual, group or another company. Since Section 303A was approved in 2003, the Exchange has had a number of inquiries as to what constitutes a "group" for purposes of the controlled company definition. It also came to the Exchange's attention that some companies were claiming to be owned by a "group" where a shareholder agreement existed relating only to the disposition of assets. The Exchange proposes, therefore, to make it clear that, in order to be deemed a controlled company, more than 50% of the voting power for the election of directors must be held by an individual, group or another company.

When a foreign private issuer ceases to qualify as such under SEC rules (so that it is required to file on domestic forms with the SEC), it may become subject to a number of requirements under Section 303A that it was not previously subject to if its home country practice differed from the applicable requirements of Section 303A. Depending upon the type of issuer, these may include the requirement to have independent nominating and compensation committees and a majority of independent directors. In addition, the company's directors may be required to meet the Section 303A.02 definition of independence, including with respect to their existing audit committee members. The Exchange proposes to modify its rules to take into consideration recent changes in Rule 3b-45 of the Act which enables a foreign private issuer to test its eligibility once a year. Specifically, the Exchange proposes to require a company that ceases to be a foreign private issuer to be in compliance with the domestic company requirements of Section 303A as follows:

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[5] 17 CFR 240.3b-4.

- The company must satisfy the majority independent board requirement of Section 303A.01, if applicable, within six months of the date it fails to qualify for foreign private issuer status pursuant to SEC Rule 240.3b-4. Under SEC Rule 240.3b-4, a company tests its status as a foreign private issuer on an annual basis at the end of its most recently completed second fiscal quarter (the "Determination Date").

- The company must satisfy the website posting requirements of Sections 303A.04, 303A.05, 303A.07(b), 303A.09 and 303A.10, to the extent such sections are applicable, within six months of the Determination Date.

- The company must have fully independent nominating and compensation committees as required by Sections 303A.04 and 303A.05, if applicable, within six months of the Determination Date.

- The company's audit committee members must be in compliance with the independence requirements of Section 303A.02, if applicable, within six months of the Determination Date.

- The company must comply with the three-person audit committee requirement of Section 303A.07(a) within six months of the Determination Date.

- The company must comply with the shareholder approval requirements of Section 303A.08 by the Determination Date, subject to the provisions in Section 303A.08 under the heading "Ongoing Transition Period for a Foreign Private Issuer Whose Status Changes."

Prior to the amendment of Sections 203.01 and 103 in August 2006, [6] Section 203.01 required listed companies to distribute to their shareholders each year an annual report containing audited financial statements. Section 103 permitted foreign private issuers to distribute a summary annual report in fulfillment of their obligations under Section 203.01. As amended, Sections 203.01 and 103 no longer require the physical distribution of annual reports. Instead, companies are required to post their annual report filed with the SEC on or through their website. The Exchange proposes to conform Section 303A to these amendments by eliminating from Section 303A all references to

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6 See Securities Exchange Act Release No. 54344 (August 21, 2006); 71 FR 51260 (August 29, 2006) (SR-NYSE-2005-68).

annual reports previously required under Section 203.01 and summary annual reports previously permitted under Section 103.

The Exchange also proposes to revise the Introduction section to more clearly specify which issuers are required to comply with Section 303A.08 and to delete the section relating to effective dates due to the fact that the rules are fully applicable, other than for the specified transition periods. The Exchange notes that it proposes to clarify that closed-end funds are subject to Section 303A.08. The fact that Section 303A.00 does not currently appear to require closed-end funds to comply with Section 303A.08 results from an oversight on the part of the Exchange.

The Exchange is adding a reference in the "Preferred and Debt Listings" subsection of the Introduction section to specify that, except as otherwise provided by Rule 10A-3 under the Act, Section 303A does not apply to securities listed under Section 703.22 ("Equity Index-Linked Securities, Commodity-Linked Securities and Currency-Linked Securities") of the Listed Company Manual. Section 703.22 had not yet been adopted at the time that Section 303A.00 was adopted. Securities listed under Section 703.22 are debt securities and, as companies listing only debt securities on the Exchange are generally not subject to Section 303A, the Exchange believes it is consistent to adopt the same approach with issuers of securities listed under Section 703.22. In addition, the Exchange proposes to move the reference to securities listed under Section 703.21 ("Equity-linked Debt Securities") from the "Other Entities" subsection of the Introduction section to the "Preferred and Debt Listings" subsection, as securities listed under Section 703.21 are debt securities and are more properly subject to the corporate governance requirements applicable to debt securities. To the extent that Rule 10A-3

applies to the issuer of a security listed under either Section 703.21 or Section 703.22, such issuer will be required to comply with Sections 303A.06 and 303A.12(b). The Exchange also proposes to delete the reference to Section 703.16 ("Investment Company Units", more commonly referred to as "Exchange-Traded Funds" or "ETFs") in the "Other Entities" subsection as ETFs are covered by the "Closed-End and Open-End Funds" subsection of the Introduction section.

The "Closed-End and Open-End Fund" subsection of the "Introduction" section is amended to clarify the requirements applicable to closed-end funds. Closed-end funds must comply with the requirements of Sections 303A.06, 303A.07(a), 303A.07(b), 303A.08 and 303A.12 with the following exceptions:

- A closed-end fund is not required to comply with the director independence requirements of Section 303A.02 incorporated into Section 303A.07(a) (this exemption already exists in the current rule, but the Exchange is proposing to move the requirement to comply with the director independence requirements of Section 303A.02 from its current position in Section 303A.07(b) to Section 303A.07(a), requiring a conforming change in the "Closed-End and Open-End Fund" subsection of the "Introduction" section. A similar conforming change is required in the paragraph discussing Business Development Companies).

- Closed-end funds are not required to comply with the Disclosure Requirements in Section 303A.07(a), when a director serves on multiple boards in the same fund complex as such service will be counted as one board for purposes of Section 303A (this exemption is already in the "Closed-End and Open-End Fund" subsection of the "Introduction" section).

- A closed-end fund is not required to make the audit committee charter required by Section 303A.07(b) available on or through its website (this specifies the existence of an exemption that is implicit in the current rule).

Section 303A.02 – Independence Requirements:

The Exchange proposes to revise the General Commentary to Section 303A.02(b)

to clarify that references to a listed company or any other company relevant to the independence standards of Section 303A.02(b) include any parent or subsidiary in a consolidated group with such company.

The Exchange proposes to delete the "Transition Rule" subsection of Section 303A.02(b) as the transition period has ended.

Section 303A.03 - Requirement for meetings of non-management directors:

The Exchange's current rule requires that listed companies hold regular meetings of non-management directors and recommends that companies schedule a meeting of independent directors at least once a year. Some companies have expressed a preference to holding regular executive sessions of just independent directors. The Exchange believes that allowing companies to hold regular executive sessions of independent directors satisfies the original intention of the rule, so the Exchange proposes to revise the Commentary accordingly.

The Exchange is also proposing to clarify the fact that all interested parties, not only shareholders, must be able to communicate their concerns regarding the listed company to the presiding director, or the non-management or independent directors as a group.

Section 303A.05 – Requirements for Compensation Committees:

The current responsibilities designated to the compensation committee include the review and approval of corporate goals, objectives, and the CEO's performance as they relate to CEO compensation. The committee also makes recommendations to the board regarding compensation of non-CEO executive officers.

The Exchange proposes to update the current requirement for the compensation

committee to produce a report to reflect the disclosure required by Item 407(e)(5) of Regulation S-K regarding compensation of executive officers.

Section 303A.06 – Requirements for Audit Committees:

In an effort to highlight listed companies' disclosure requirements, the Exchange proposes to revise the Commentary to Section 303A.06 to specifically point out that Rule 10A-3 requires disclosure of reliance on certain exceptions contained in that rule.

Section 303A.07 – Duties of the Audit Committee:

The Exchange is proposing to combine the Section 303A.07(a) requirement for a listed company to have an audit committee comprised of minimum of three members with the Section 303A.07(b) requirement that such audit committee members must meet the independence standards set forth in Section 303A.02 and, in the absence of an applicable exemption, Rule 10A-3 and to renumber the remaining parts of Section 303A.07.

In addition, Section 303A.07(a) currently requires that, if an audit committee member simultaneously 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 to three or less, 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 must disclose such determination. The current language has led to some confusion that disclosure is only required to the extent that the listed company does not limit the number of audit committees on which its audit committee members serve to three or less. The Exchange proposes to amend the language to make clear that the mandated disclosure is required to

the extent that an audit committee member simultaneously serves on the audit committees of more than three public companies.

Section 303A.07 requires that a company's audit committee charter must provide that the audit committee will meet to review and discuss the company's financial statements and must review the company's specific Management's Discussion and Analysis disclosures. Closed-end funds, however, are not subject to the requirement to provide this disclosure. The Exchange proposes to add language to the Commentary to make clear that, if a closed-end fund chooses to voluntarily include a "Management's Discussion of Fund Performance" in its Form N-CSR, its audit committee is required to meet to review and discuss it. The Exchange also intends to clarify that telephonic conference calls constitute meetings for purposes of Section 303A.07 if allowed by applicable corporate law, but that polling directors is not allowed in lieu of a meeting.

The Exchange proposes to update the current requirement for the audit committee to produce a report to reflect the disclosure required by Item 407(d)(3)(i).

Section 303A.08 – Shareholder Approval of Equity Compensation Plans:

The Exchange proposes to revise the "Transition Rules" section of this item to specify that the effective date of this listing standard was June 30, 2003 and to eliminate references to transitional provisions that are no longer relevant in light of the expiration of the specified transition periods.

To the extent that a listed foreign private issuer ceases to qualify as such under SEC rules (so that it is required to file on domestic forms with the SEC) and as a result of such change in status becomes subject to Section 303A.08 for the first time, such company will be granted a limited transition period with respect to discretionary plans

and formula plans that do not comply with Section 303A.08 that were in place prior to the date that its status changed so that additional grants may be made after the date that its status changed without shareholder approval. This transition period will end upon the later to occur of:

- six months after the date as of which the company fails to qualify for foreign private issuer status pursuant to SEC Rule 240.3b-4. Under SEC Rule 240.3b-4, a company tests its status as a foreign private issuer on an annual basis at the end of its most recently completed second fiscal quarter (the "Determination Date"); and
- the first annual meeting after the Determination Date, but, in any event no later than one year after the Determination Date.

A shareholder-approved formula plan may continue to be used after the end of this transition period if it is amended to provide for a term of ten years or less from the date of its original adoption or, if later, the date of its most recent shareholder approval. Such an amendment may be made before or after the Determination Date, and would not itself be considered a "material revision" requiring shareholder approval.

In addition, a formula plan may continue to be used, without shareholder approval, if the grants after the date that the company's status changed are made only from the shares available immediately before the Determination Date, in other words, based on formulaic increases that occurred prior to the Determination Date.

A shareholder-approved formula plan may continue to be used after the end of this transition period if it is amended to provide for a term of ten years or less from the date of its original adoption or, if later, the date of its most recent shareholder approval. Such an amendment may be made before or after the date that the company's status changed, and would not itself be considered a "material revision" requiring shareholder approval.

In addition, a formula plan may continue to be used, without shareholder approval, if the grants after the date that the company's status changed are made only from the shares available immediately before the date that the company's status changed, in other words, based on formulaic increases that occurred prior to the date that the company's status changed.

Section 303A.10 – Code of Business Conduct and Ethics:

Section 303A.10 requires that listed companies disclose any waiver of the code of business conduct and ethics granted to executive officers and directors. The Exchange proposes to specify that the waiver must be disclosed to shareholders within four business days of such determination and that disclosure must be made by distributing a press release, providing website disclosure, or by filing a current report on Form 8-K with the SEC. This proposed approach varies slightly from the guidance currently provided by Question G-1 of the NYSE's Frequently Asked Questions on Section 303A, which provides that the waiver must be disclosed to shareholders within two to three business days of the board's determination. The Exchange is proposing a four-day period to be uniform with the requirements of Item 5.05 of Form 8-K regarding disclosure of waivers from codes of ethics and will revise the answer in the FAQs accordingly.

Section 303A.11 – Foreign Private Issuer Disclosure:

Section 303A.11 requires that foreign private issuers disclose the significant differences between the corporate governance practices followed by the company in its home country and the requirements of Section 303A applicable to U.S. companies. Currently, companies have a choice to make that disclosure either in their annual report to shareholders or on their corporate websites. Under Item 16G of Form 20-F (which

became effective for filings relating to fiscal years ending on or after December 15, 2008), foreign private issuers that file their annual report on Form 20-F are now required to include the disclosure of significant differences in the Form 20-F. Therefore, to avoid confusing and duplicative requirements, the Exchange proposes to require foreign private issuers that are required to file an annual report on Form 20-F with the SEC to include the statement of significant differences in that annual report. All other foreign private issuers will have the choice to either (i) include the statement of significant differences in an annual report filed with the SEC or (ii) make the statement of significant differences available on or through the company's website. If the statement of significant differences is made available on or through the company's website, the company must disclose that fact in its annual report filed with the SEC and provide the website address.

Section 303A.12 – Certification Requirements:

Currently, Section 303A.12(a) requires that listed companies disclose that they filed the CEO certification required by the NYSE and any certifications required by the SEC in the following year's annual report. This requirement has caused significant confusion due to the fact that it relates to filings that were made in the previous year. The Exchange proposes to eliminate this disclosure requirement in light of several factors. First, the Exchange notes that at the time the Section 303A.12(a) disclosure requirement was adopted, the SEC had not yet amended the exhibit requirements of Form 10-K to require that the SEC certification be included as an exhibit to the company's annual report filed with the SEC. The Exchange also notes that with respect to disclosure on whether a company submitted a qualified annual written affirmation to the NYSE during the previous year, investors now have timely notification of all material non-compliance

with the NYSE's listing standards due to the SEC's amended requirements relating to Form 8-K filings (Item 3.01 of Form 8-K requires registrants to file a Form 8-K disclosing any noncompliance with Exchange rules and any action or response that, at the time of filing, the registrant has determined to take regarding its noncompliance, within four business days of either (i) notification by the Exchange of the registrant's noncompliance with an Exchange rule or (ii) notification by the registrant to the Exchange that the registrant is aware of a material noncompliance with an Exchange rule). In addition, the NYSE has a program of appending a below compliance ("BC") indicator to the ticker symbol of an issuer that is non-compliant with the Exchange's corporate governance standards. In light of the above, the Exchange has reevaluated the benefit of its current disclosure requirements and believes that disclosure regarding the previous year's compliance is unnecessary.

The Exchange is also proposing to revise Section 303A.12(b) to specify that listed companies must notify the Exchange in writing after any executive officer of the listed company becomes aware of any non-compliance with Section 303A, as opposed to requiring notification in the event of "material non-compliance" as provided by the current rule.

Section 303A.14 – Website requirement:

Listed companies have expressed confusion regarding the placement within Section 303A of the requirement contained in Section 303A.14 that each listed company must maintain a publicly-accessible website. As a result, the Exchange proposes to redesignate Section 303A.14 as Section 307.00 and to clarify in the commentary that this requirement applies to companies subject to website posting requirements under any

applicable provision of the Listed Company Manual, rather than just Section 303A. Section 307 will specify that companies' websites must be accessible from the United States, must clearly indicate in the English language the location of the documents on the website that are required to be posted and such documents must be printable in the English language.

Section 307.00:

Section 307.00 of the Listed Company Manual sets out guidance regarding related party transactions. As this guidance is duplicative of Section 314 ("Related Party Transactions"") and is therefore redundant, the Exchange proposes to eliminate Section 307.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[7] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

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7 15 U.S.C. 78f(b)(5).

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSE-2009-89 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSE-2009-89. This file

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE, Washington, DC 20549-1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at www.nyse.com. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2009-89 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon
Deputy Secretary

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[8] 17 CFR 200.30-3(a)(12).

EXHIBIT 5

Text of the Proposed Rule Change

The proposed changes to Sections 303A and 307.00 of the Listed Company Manual will not take effect until January 1, 2010. Consequently, the existing text of these sections will remain in the Listed Company Manual through December 31, 2009 and will be removed immediately thereafter. Upon approval of this filing, the amended versions of those sections will also be included in the Listed Company Manual, with introductory text indicating that the revised text does not become operative until January 1, 2010. The rule text in this Exhibit 5 is marked to show how the rule text that will become operative on January 1, 2010, differs from the current rule text.

Additions are underscored. Deletions are [bracketed].

Listed Company Manual

* * * *

The following will be the operative text of Section 303A effective through December 31, 2009:

Section 303A.00 Corporate Governance Standards

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The following will be the operative text of Section 303A effective commencing January 1, 2010:

Section 303A.00 Corporate Governance Standards

303A.00 Introduction

General Application

Companies listed on the Exchange must comply with certain standards regarding corporate governance as codified in this Section 303A. Consistent with the NYSE's traditional approach, as well as the requirements of the Sarbanes-Oxley Act of 2002, certain provisions of Section 303A are applicable to some listed companies but not to others.

Equity Listings

Section 303A applies in full to all companies listing common equity securities, with the following exceptions:

Controlled Companies

A listed company of which more than 50% of the voting power for the election of directors is held by an individual, a group or another company [need] is not required to comply with the requirements of Sections 303A.01, 303A.04 or 303A.05. Controlled companies must comply with the remaining provisions of Section 303A.

Disclosure Requirement: A controlled company that chooses to take advantage of any or all of these exemptions must [disclose that choice, that it is a controlled company and the basis for the determination in its annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the SEC] comply with the disclosure requirements set forth in Instruction 1 to Item 407(a) of Regulation S-K. [Controlled companies must comply with the remaining provisions of Section 303A.]

Limited Partnerships and Companies in Bankruptcy

Due to their unique attributes, limited partnerships and companies in bankruptcy proceedings [need] are not required to comply with the requirements of Sections 303A.01, 303A.04 or 303A.05. However, all limited partnerships (at the general partner level) and companies in bankruptcy proceedings must comply with the remaining provisions of Section 303A.

Closed-End and Open-End Funds

The Exchange considers the significantly expanded standards and requirements provided for in Section 303A to be unnecessary for closed-end and open-end management investment companies that are registered under the Investment Company Act of 1940, given the pervasive federal regulation applicable to them. However, closed-end funds must comply with the requirements of Sections 303A.06, 303A.07(a), [and] 303A.07(b[c]), 303A.08 and 303A.12 with the following exceptions. A closed end fund is not required to comply with the director independence requirements of Section 303A.02 incorporated into Section 303A.07(a). A closed end fund is also not required to comply with the Disclosure Requirements in Section [Note, however, that in view of the common practice to utilize the same directors for boards in the same fund complex, closed-end funds will not be required to comply with the disclosure requirement in the second paragraph of the Commentary to] 303A.07(a), [which calls for disclosure of a board's determination with respect to simultaneous service on more than three public company audit committees] when a director serves on multiple boards in the same fund complex as such service will be counted as one board for purposes of Section 303A. [However, the other provisions of that paragraph will apply.] In addition, a closed-end fund is not required to make the audit committee charter required by Section 303A.07(b) available on or through its website.

Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the Investment Company Act of 1940 that are not registered under that [A]act, are required to comply with all of the provisions

of Section 303A applicable to domestic issuers other than Section[s] 303A.02 and the Section 303A.02 director independence requirements incorporated into 303A.07[(b)](a). For purposes of Sections 303A.01, 303A.03, 303A.04, 303A.05[,] and 303A.09, a director of a business development company shall be considered to be independent if he or she is not an "interested person" of the company, as defined in Section 2(a)(19) of the Investment Company Act of 1940.

As required by Rule 10A-3 under the Exchange Act, open-end funds (which can be listed as Investment Company Units, more commonly known as Exchange Traded Funds or ETFs) are required to comply with the requirements of Sections 303A.06 and 303A.12(b) and (c).

Rule 10A-3(b)(3)(ii) under the Exchange Act requires that each audit committee must establish procedures for the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters. In view of the external management structure often employed by closed-end and open-end funds, the Exchange also requires the audit committees of such companies to establish such procedures for the confidential, anonymous submission by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the management company, as well as employees of the management company. This responsibility must be addressed in the audit committee charter.

Other Entities

Except as otherwise required by Rule 10A-3 under the Exchange Act (for example, with respect to open-end funds), Section 303A does not apply to passive business organizations in the form of trusts (such as royalty trusts) or to derivatives and special purpose securities (such as those described in Sections [703.16,] 703.19[,] and 703.20 [and 703.21]). To the extent that Rule 10A-3 applies to a passive business organization, listed derivative or special purpose security, such entities are required to comply with Sections 303A.06 and 303A.12(b).

Foreign Private Issuers

Listed companies that are foreign private issuers (as such term is defined in Rule 3b-4 under the Exchange Act) are permitted to follow home country practice in lieu of the provisions of this Section 303A, except that such companies are required to comply with the requirements of Sections 303A.06, 303A.11 and 303A.12(b) and (c).

Preferred and Debt Listings

Section 303A does not generally apply to companies listing only preferred or debt securities (including securities listed under Sections 703.21 and 703.22) on the Exchange. To the extent required by Rule 10A-3 under the Exchange Act, all companies listing only preferred or debt securities (including securities listed under Sections 703.21 and 703.22) on the NYSE are required to comply with the requirements of Sections 303A.06 and 303A.12(b) and (c).

[Effective Dates/Transition Periods

Except for Section 303A.08, which became effective June 30, 2003, listed companies will have until the earlier of their first annual meeting after January 15, 2004, or October 31, 2004, to comply with the new standards contained in Section 303A, although if a listed company with a classified board would be required (other than by virtue of a requirement under Section 303A.06) to change a director who would not normally stand for election in such annual meeting, the listed company may continue such director in office until the second annual meeting after such date, but no later than December 31, 2005. In addition, foreign private issuers will have until July 31, 2005 to comply with the new audit committee standards set out in Section 303A.06, and will not be required to provide the written affirmations required by Section 303A.12(c) until after that date. As a general matter, the existing audit committee requirements provided for in Section 303 continue to apply to listed companies pending the transition to the new rules. On November 3, 2004, the SEC approved a change to the Section 303A.02(b)(iii) bright line test for director independence relating to audit firms. Companies will have until their first annual meeting after June 30, 2005, to replace a director who was independent under the prior test but who is not independent under the current test.

Companies listing in conjunction with their initial public offering will be permitted to phase in their independent nomination and compensation committees on the same schedule as is permitted pursuant to Rule 10A-3 under the Exchange Act for audit committees, that is, one independent member at the time of listing, a majority of independent members within 90 days of listing and fully independent committees within one year. Such companies will be required to meet the majority independent board requirement within 12 months of listing. For purposes of Section 303A other than Sections 303A.06 and 303A.12(b), a company will be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Exchange Act. The Exchange will also permit companies that are emerging from bankruptcy or have ceased to be controlled companies within the meaning of Section 303A to phase in independent nomination and compensation committees and majority independent boards on the same schedule as companies listing in conjunction with an initial public offering. However, for purposes of Sections 303A.06 and 303A.12(b), a company will be considered to be listing in conjunction with an initial public offering only if it meets the conditions of Rule 10A-3(b)(1)(iv)(A) under the Exchange Act, namely, that the company was not, immediately prior to the effective date of a registration statement, required to file reports with the SEC pursuant to Section 13(a) or 15(d) of the Exchange Act.

Companies listing upon transfer from another market have 12 months from the date of transfer in which to comply with any requirement to the extent the market on which they were listed did not have the same requirement. To the extent the other market has a substantially similar requirement but also had a transition period from the effective date of that market's rule, which period had not yet expired, the company will have the same transition period as would have been available to it on the other market. This transition period for companies transferring from another market will not apply to the requirements

of Section 303A.06 unless a transition period is available pursuant to Rule 10A-3 under the Exchange Act.

References to Form 10-K

There are provisions in this Section 303A that call for disclosure in a listed company's Form 10-K under certain circumstances. If a listed company subject to such a provision is not a company required to file a Form 10-K, then the provision shall be interpreted to mean the annual periodic disclosure form that the listed company does file with the SEC. For example, for a closed-end management company, the appropriate form would be the annual Form N-CSR. If a listed company is not required to file either an annual proxy statement or an annual periodic report with the SEC, the disclosure shall be made in the annual report required under Section 203.01 of the NYSE Listed Company Manual.]

Compliance Dates

Companies listing on the NYSE are required to comply with all applicable requirements of Section 303A as of date that the company's securities first trade on the NYSE (the "listing date") unless otherwise provided below.

A Company Listing in Conjunction with an Initial Public Offering

A company will be considered to be listing in conjunction with an initial public offering as follows:

- For purposes of Section 303A other than Sections 303A.06 (which incorporates Exchange Act Rule 10A-3 by reference) and 303A.12(b), a company will be considered to be listing in conjunction with an initial public offering if, immediately prior to listing, it does not have a class of common stock registered under the Exchange Act.

- For purposes of Sections 303A.06 and 303A.12(b), a company will be considered to be listing in conjunction with an initial public offering only if it meets the conditions of Rule 10A-3(b)(1)(iv)(A) under the Exchange Act, namely, that the company was not, immediately prior to the effective date of a registration statement, a reporting company that was required to file reports with the SEC pursuant to Sections 13(a) or 15(d) of the Exchange Act.

A company listing in conjunction with its initial public offering is required to comply as follows:

- The company must satisfy the majority independent board requirement of Section 303A.01, if applicable, within one year of the listing date.

- The company must satisfy the website posting requirements of Sections 303A.04, 303A.05, 303A.07(b), 303A.09 and 303A.10, to the extent such sections are applicable, by the earlier of the date the initial public offering closes or five business days from the listing date.

- The company must have at least one independent member on its nominating committee and at least one independent member on its compensation committee as required by Sections 303A.04 and 303A.05, if applicable, by the earlier of the date the initial public offering closes or five business days from the listing date, at least a majority of independent members on each committee within 90 days of the listing date and fully independent committees within one year of the listing date.

- The company must have at least one independent member on its audit committee that satisfies the requirements of Rule 10A-3 and, if applicable, Section 303A.02, by the listing date, at least a majority of independent members within 90 days of the effective date of its registration statement and a fully independent committee within one year of the effective date of its registration statement.

- With respect to the requirement of Section 303A.07(a) that the audit committee must have at least three members, the company must have at least one member on its audit committee by the listing date, at least two members within 90 days of the listing date and at least three members within one year of the listing date.

Note: the company may include non-independent directors on its audit committee during the phase-in period if it was not required to file periodic reports with the SEC prior to listing. If it was required to file periodic reports with the SEC prior to listing, it is precluded from including non-independent directors on its audit committee during the phase-in period.

A Company Listing in Conjunction with a Carve-out or Spin-off Transaction

- The company must satisfy the majority independent board requirement of Section 303A.01, if applicable, within one year of the listing date.

- The company must satisfy the website posting requirements of Sections 303A.04, 303A.05, 303A.07(b), 303A.09 and 303A.10, to the extent such sections are applicable, by the date the transaction closes.

- The company must have at least one independent member on its nominating committee and at least one independent member on its compensation committee as required by Sections 303A.04 and 303A.05, if applicable, by the date the transaction closes, at least a majority of independent members on each committee within 90 days of the listing date and fully independent committees within one year of the listing date.

- The company must have at least one independent member on its audit committee that satisfies the requirements of Rule 10A-3 and, if applicable, Section 303A.02, by the listing date, at least a majority of independent members within 90 days of the effective date of its registration statement and a fully independent committee within one year of the effective date of its registration statement.

- With respect to the requirement of Section 303A.07(a) that the audit committee must have at least three members, the company must have at least one member on its audit committee by the listing date, at least two members within 90 days of the listing date and at least three members within one year of the listing date.

Note: the company may include non-independent directors on its audit committee during the phase-in period if it was not required to file periodic reports with the SEC prior to listing. If it was required to file periodic reports with the SEC prior to listing, it is precluded from including non-independent directors on its audit committee during the phase-in period.

A Company that Lists Upon Emergence from Bankruptcy

- The company must satisfy the majority independent board requirement of Section 303A.01, if applicable, within one year of the listing date.

- The company must satisfy the website posting requirements of Sections 303A.04, 303A.05, 303A.07(b), 303A.09 and 303A.10, to the extent such sections are applicable, by the listing date.

- The company must have at least one independent member on its nominating committee and at least one independent member on its compensation committee as required by Sections 303A.04 and 303A.05, if applicable, by the listing date, at least a majority of independent members on each committee within 90 days of the listing date and fully independent committees within one year of the listing date.

- The company must comply with the audit committee requirements of Section 303A.06 including, if applicable, the independence requirements of Section 303A.02, by the listing date unless an exemption is available pursuant to Rule 10A-3.

- The company must comply with the three-person audit committee requirement of Section 303A.07(a) by the listing date.

A Company Previously Registered Pursuant to Section 12(b) of the Exchange Act

- The company must satisfy requirements of Section 303A within one year of the listing date to the extent the national securities exchange on which it was listed did not have the same requirement. If the other exchange had a substantially similar requirement and the company was afforded a transition period that had not expired, the company will have the same transition period as would have been available to it on the other exchange.

- The company must comply with the audit committee requirements of Section 303A.06 including, if applicable, the independence requirements of Section 303A.02, by the listing date unless an exemption is available pursuant to Rule 10A-3.

A Company Previously Registered Pursuant to Section 12(g) of the Exchange Act

- The company must satisfy the majority independent board requirement of Section 303A.01, if applicable, within one year of the listing date.

- The company must satisfy the website posting requirements of Sections 303A.04, 303A.05, 303A.07(b), 303A.09 and 303A.10, to the extent such sections are applicable, by the listing date.

- The company must have at least one independent member on its nominating committee and at least one independent member on its compensation committee as required by Sections 303A.04 and 303A.05, if applicable, by the listing date, at least a majority of independent members on each committee within 90 days of the listing date and fully independent committees within one year of the listing date.

- The company must comply with the audit committee requirements of Section 303A.06 including, if applicable, the independence requirements of Section 303A.02, by the listing date unless an exemption is available pursuant to Rule 10A-3.

- With respect to the requirement of Section 303A.07(a) that the audit committee must have at least three members, the company must have at least one member on its audit committee by the listing date, at least two members within 90 days of the listing date and at least three members within one year of the listing date.

A Company Ceases to Qualify as a Controlled Company

To the extent a controlled company ceases to qualify as such, it is required to comply with the Section 303A domestic company requirements as follows:

- The company must satisfy the majority independent board requirement of Section 303A.01, if applicable, within one year of the date its status changed.

- The company must satisfy the website posting requirements of Sections 303A.04 and 303A.05, if applicable, by the date its status changed.

- The company must have at least one independent member on its nominating committee and at least one independent member on its compensation committee as required by Sections 303A.04 and 303A.05, if applicable, by the date its status changed, at least a majority of independent members on each committee within 90 days of the date its status changed and fully independent committees within one year of the date its status changed.

A Company Ceases to Qualify as a Foreign Private Issuer

To the extent a foreign private issuer ceases to qualify as such under SEC rules (so that it is required to file on domestic forms with the SEC), such company is required to comply with the Section 303A domestic company requirements as follows:

- The company must satisfy the majority independent board requirement of Section 303A.01, if applicable, within six months of the date as of which it fails to qualify for foreign private issuer status pursuant to SEC Rule 240.3b-4. Under SEC Rule 240.3b-4, a company tests its status as a foreign private issuer on an annual basis at the end of its most recently completed second fiscal quarter (hereinafter, for purposes of this subsection, the "Determination Date").

- The company must satisfy the website posting requirements of Sections 303A.04, 303A.05, 303A.07(b), 303A.09 and 303A.10, to the extent such sections are applicable, within six months of the Determination Date.

- The company must have fully independent nominating and compensation committees as required by Sections 303A.04 and 303A.05, if applicable, within six months of the Determination Date.

- The company's audit committee members must comply with the independence requirements of Section 303A.02, if applicable, within six months of the Determination Date.

- The company must comply with the three-person audit committee requirement of Section 303A.07(a) within six months of the Determination Date.

- The company must comply with the shareholder approval requirements of Section 303A.08 by the Determination Date, subject to the provisions in Section 303A.08 under the heading "Ongoing Transition Period for a Foreign Private Issuer Whose Status Changes."

Disclosure Requirements

If a listed company makes a required Section 303A disclosure in its annual proxy statement, or if the company does not file an annual proxy statement, in its annual report filed with the SEC, it may incorporate such disclosure by reference from another document that is filed with the SEC to the extent permitted by applicable SEC rules. If a listed company is not a company required to file a Form 10-K, then any provision in this Section 303A permitting a company to make a required disclosure in its annual report on Form 10-K filed with the SEC shall be interpreted to mean the annual periodic disclosure form that the listed company does file with the SEC. For example, for a closed-end management investment company, the appropriate form would be the annual Form N-CSR.

303A.01 Independent Directors

Listed companies must have a majority of independent directors.

Commentary: Effective boards of directors exercise independent judgment in carrying out their responsibilities. Requiring a majority of independent directors will increase the quality of board oversight and lessen the possibility of damaging conflicts of interest.

303A.02 Independence Tests

In order to tighten the definition of "independent director" for purposes of these standards:

(a) 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 identify which directors are independent and disclose the basis for that determination.]

Commentary: 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 (references to "listed company" would include any parent or subsidiary in a consolidated group with the listed company). Accordingly, it is 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 listed company, the board should consider the 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. However, as the concern is independence from management, the Exchange does not view ownership of even a significant amount of stock, by itself, as a bar to an independence finding.

[The identity of the independent directors and the basis for a board determination that a relationship is not material must be disclosed in the listed company's annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the SEC. In this regard, a board may adopt and disclose categorical standards to assist it in making determinations of independence and may make a general disclosure if a director meets these standards. Any determination of independence for a director who does not meet these standards must be specifically explained. A company must disclose any standard it adopts.

It may then make the general statement that the independent directors meet the standards set by the board without detailing particular aspects of the immaterial relationships between individual directors and the company.

In the event that a director with a business or other relationship that does not fit within the disclosed standards is determined to be independent, a board must disclose the basis for its determination in the manner described above. This approach provides investors with an adequate means of assessing the quality of a board's independence and its independence determinations while avoiding excessive disclosure of immaterial relationships.]

Disclosure Requirement: The listed company must comply with the disclosure requirements set forth in Item 407(a) of Regulation S-K.

(b) In addition, a director is not independent if:

(i) The director is, or has been within the last three years, an employee of the listed company, or an immediate family member is, or has been within the last three years, an executive officer,[1] of the listed company.

Commentary: Employment as an interim Chairman or CEO or other executive officer shall not disqualify a director from being considered independent following that employment.

(ii) The director has received, or has an immediate family member who has received, during any twelve-month period within the last three years, more than $120,000 in direct compensation from the listed 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).

Commentary: Compensation received by a director for former service as an interim Chairman or CEO or other executive officer need not be considered in determining independence under this test. Compensation received by an immediate family member for service as an employee of the listed company (other than an executive officer) need not be considered in determining independence under this test.

(iii) (A) The director is a current partner or employee of a firm that is the listed company's internal or external auditor; (B) the director has an immediate family member who is a current partner of such a firm; (C) the director has an immediate family member who is a current employee of such a firm and personally works on the listed company's audit; or (D) the director or an immediate family member was within the last three years a partner or employee of such a firm and personally worked on the listed company's audit within that time.

(iv) The director or an immediate family member is, or has been within the last three years, employed as an executive officer of another company where any of the listed company's present executive officers at the same time serves or served on that company's compensation committee.

(v) The director is a current employee, or an immediate family member is a current executive officer, of a company that has made payments to, or received payments from, the listed company for property or services in an

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[1] For purposes of Section 303A, the term "executive officer" has the same meaning specified for the term "officer" in Rule 16a-1(f) under the Securities Exchange Act of 1934.

amount which, in any of the last three fiscal years, exceeds the greater of $1 million, or 2% of such other company's consolidated gross revenues.

Commentary: In applying the test in Section 303A.02(b)(v), both the payments and the consolidated gross revenues to be measured shall be those reported in the last completed fiscal year of such other company. The look-back provision for this test applies solely to the financial relationship between the listed company and the director or immediate family member's current employer; a listed company need not consider former employment of the director or immediate family member.

Disclosure Requirement: Contributions to tax exempt organizations shall not be considered "payments" for purposes of Section 303A.02(b)(v), provided however that a listed company shall disclose either on or through its website or in its annual proxy statement, or if the listed company does not file an annual proxy statement, in the listed company's annual report on Form 10-K filed with the SEC, any such contributions made by the listed company to any tax exempt organization in which any independent director serves as an executive officer if, within the preceding three years, contributions in any single fiscal year from the listed company to the organization exceeded the greater of $1 million, or 2% of such tax exempt organization's consolidated gross revenues. If this disclosure is made on or through the listed company's website, the listed company must disclose that fact in its annual proxy statement or annual report, as applicable, and provide the website address. Listed company boards are reminded of their obligations to consider the materiality of any such relationship in accordance with Section 303A.02(a) above.

General Commentary to Section 303A.02(b): An "immediate family member" includes a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home. When applying the look-back provisions in Section 303A.02(b), listed companies need not consider individuals who are no longer immediate family members as a result of legal separation or divorce, or those who have died or become incapacitated.

In addition, references to the "listed company" or "company" [would] include any parent or subsidiary in a consolidated group with the listed company or such other company as is relevant to any determination under the independent standards set forth in this Section 303A.02(b).

[Transition Rule. Each of the above standards contains a three-year "look-back" provision. In order to facilitate a smooth transition to the new independence standards, the Exchange will phase in the "look-back" provisions by applying only a one-year look-back for the first year after adoption of these new standards. The three-year look-backs provided for in Section 303A.02(b) will begin to apply only from and after November 4, 2004.

As an example, until November 3, 2004, a listed company need look back only one year when testing compensation under Section 303A.02(b)(ii). Beginning November 4, 2004,

however, the listed company would need to look back the full three years provided in Section 303A.02(b)(ii).]

303A.03 Executive Sessions

To empower non-management directors to serve as a more effective check on management, the non-management directors of each listed company must meet at regularly scheduled executive sessions without management.

Commentary: To promote open discussion among the non-management directors, companies must schedule regular executive sessions in which those directors meet without management participation. "Non-management" directors are all those who are not executive officers, and includes such directors who are not independent by virtue of a material relationship, former status or family membership, or for any other reason.

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 executive sessions. A non-management director must preside over each executive session [of the non-management directors], although the same director is not required to preside at all executive sessions [of the non-management directors].

While this Section 303A.03 refers to meetings of non-management directors, listed companies may instead choose to hold regular executive sessions of independent directors only. An independent director must preside over each executive session of the independent directors, although the same director is not required to preside at all executive sessions of the independent directors.

If a listed company chooses to hold regular meetings of all non-management directors, such listed company should hold an executive session including only independent directors at least once a year.

Disclosure Requirements: If one director is chosen to preside at all of these [meetings] executive sessions, his or her name must be disclosed [in] either on or through the listed company's website or in its annual proxy statement or, if the listed company does not file an annual proxy statement, in [the company's] its annual report on Form 10-K filed with the SEC. If this disclosure is made on or through the listed company's website, the listed company must disclose that fact in its annual proxy statement or annual report, as applicable, and provide the website address. Alternatively, if the same individual is not the presiding director at every meeting, a listed company must disclose the procedure by which a presiding director is selected for each executive session. For example, a listed company may wish to rotate the presiding position among the chairs of board committees.

In order that all interested parties (not just shareholders) may be able to make their concerns known to the non-management or independent directors, a listed company must also disclose a method for such parties to communicate directly with the presiding

director or with [the non-management] those directors as a group[. Such disclosure must be made in] either on or through the listed company's website or in its annual proxy statement or, if the listed company does not file an annual proxy statement, in [the company's] its annual report on Form 10-K filed with the SEC. If this disclosure is made on or through the listed company's website, the listed company must disclose that fact in its annual proxy statement or annual report, as applicable, and provide the website address. Companies may, if they wish, utilize for this purpose the same procedures they have established to comply with the requirement of Rule 10A-3(b)(3) under the Exchange Act regarding complaints to the audit committee, as applied to listed companies through Section 303A.06.

[While this Section 303A.03 refers to meetings of non-management directors, if that group includes directors who are not independent under this Section 303A, listed companies should at least once a year schedule an executive session including only independent directors.]

303A.04 Nominating/Corporate Governance Committee

(a) Listed companies must have a nominating/corporate governance committee composed entirely of independent directors.

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

(i) the committee's purpose and responsibilities – which, at minimum, must be to: identify individuals qualified to become board members, consistent with criteria approved by the board, and to select, or to 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 guidelines applicable to the corporation; and oversee the evaluation of the board and management; and

(ii) an annual performance evaluation of the committee.

Commentary: 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.

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

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.

Boards may allocate the responsibilities of the nominating/corporate governance committee to committees of their own denomination, provided that the committees are composed entirely of independent directors. Any such committee must have a [published] committee charter.

Website Posting Requirement: A listed company must make its nominating/corporate governance committee charter available on or through its website. If any function of the nominating/corporate governance committee has been delegated to another committee, the charter of that committee must also be made available on or through the listed company's website.

Disclosure Requirements: A listed company must disclose in its annual proxy statement or, if it does not file an annual proxy statement, in its annual report on Form 10-K filed with the SEC that its nominating/corporate governance committee charter is available on or through its website and provide the website address.

303A.05 Compensation Committee

(a) Listed companies must have a compensation committee composed entirely of independent directors.

(b) The compensation committee must have a written charter that addresses:

(i) the committee's purpose and responsibilities – which, at minimum, must be to have direct responsibility to:

(A) 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; [and]

(B) make recommendations to the board with respect to non-CEO executive officer compensation, and incentive-compensation and equity-based plans that are subject to board approval; and

(C) [produce a] prepare the [compensation committee report on executive officer compensation as] disclosure required by Item 407(e)(5) of Regulation S-K [the SEC to be included in the listed company's annual proxy statement or annual report on Form 10-K filed with the SEC];

(ii) an annual performance evaluation of the compensation committee.

Commentary: In determining the long-term incentive component of CEO compensation, the committee should consider the listed 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. To avoid confusion, note that the compensation committee is not precluded from approving awards (with or without ratification of the board) as may be required to comply with applicable tax laws (i.e., Rule 162(m)). Note also that nothing in Section 303A.05(b)(i)(B) is intended to preclude the board from delegating its authority over such matters to the compensation committee.

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 executive officer 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.

Boards may allocate the responsibilities of the compensation committee to committees of their own denomination, provided that the committees are composed entirely of independent directors. Any such committee must have a [published] committee charter.

Nothing in this provision should be construed as precluding discussion of CEO compensation with the board generally, as it is not the intent of this standard to impair communication among members of the board.

Website Posting Requirement: A listed company must make its compensation committee charter available on or through its website. If any function of the compensation committee has been delegated to another committee, the charter of that committee must also be made available on or through the listed company's website.

Disclosure Requirements: A listed company must disclose in its annual proxy statement or, if it does not file an annual proxy statement, in its annual report on Form 10-K filed with the SEC that its compensation committee charter is available on or through its website and provide the website address.

303A.06 Audit Committee

Listed companies must have an audit committee that satisfies the requirements of Rule 10A-3 under the Exchange Act.

Commentary: The Exchange will apply the requirements of Rule 10A-3 in a manner consistent with the guidance provided by the Securities and Exchange Commission in SEC Release No. 34-47654 (April 1, 2003). Without limiting the generality of the

foregoing, the Exchange will provide companies the opportunity to cure defects provided in Rule 10A-3(a)(3) under the Exchange Act.

Disclosure Requirement: Please note that Rule 10A-3(d)(1) and (2) require listed companies to disclose reliance on certain exceptions from Rule 10A-3 and to disclose an assessment of whether, and if so, how, such reliance would materially adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of Rule 10A-3.

303A.07 Audit Committee Additional Requirements

(a) The audit committee must have a minimum of three members. All audit committee members must satisfy the requirements for independence set out in Section 303A.02 and, in the absence of an applicable exemption, Rule 10A-3(b)(1).

Commentary: Each member of the audit committee must be financially literate, as such qualification is interpreted by the listed company's board in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee. In addition, at least one member of the audit committee must have accounting or related financial management expertise, as the listed company's board interprets such qualification in its business judgment. While the Exchange does not require that a listed company's audit committee include a person who satisfies the definition of audit committee financial expert set out in Item [401(h)] 407(d)(5)(ii) of Regulation S-K, a board may presume that such a person has accounting or related financial management expertise.

Because of the audit committee's demanding role and responsibilities, and the time commitment attendant to committee membership, each prospective audit committee member should evaluate carefully the existing demands on his or her time before accepting this important assignment.

Disclosure Requirement: [Additionally, i] If an audit committee member simultaneously 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 to three or less, 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 must disclose such determination [in] either on or through the listed company's website or in its annual proxy statement or, if the listed company does not file an annual proxy statement, in [the company's] its annual report on Form 10-K filed with the SEC. If this disclosure is made on or through the listed company's website, the listed company must disclose that fact in its annual proxy statement or annual report, as applicable, and provide the website address.

(b) [In addition to any requirement of Rule 10A-3(b)(1), all audit committee members must satisfy the requirements for independence set out in Section 303A.02.

(c) [The audit committee must have a written charter that addresses:

(i) the committee's purpose – which, at minimum, must be to:

(A) assist board oversight of (1) the integrity of the listed company's financial statements, (2) the listed company's compliance with legal and regulatory requirements, (3) the independent auditor's qualifications and independence, and (4) the performance of the listed company's internal audit function and independent auditors; and

(B) prepare [an audit committee report as required by the SEC to be included in the listed company's annual proxy statement] the disclosure required by Item 407(d)(3)(i) of Regulation S-K;

(ii) an annual performance evaluation of the audit committee; and

(iii) the duties and responsibilities of the audit committee – which, at a minimum, must include those set out in Rule 10A-3(b)(2), (3), (4) and (5) of the Exchange Act , as well as to:

(A) 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 listed company;

Commentary: 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 listed company's internal auditors (or other personnel responsible for the internal audit function). In addition to assuring the regular rotation of the lead audit partner as required by law, the audit committee should further consider whether, in order to assure continuing auditor independence, there should be regular rotation of the audit firm itself. The audit committee should present its conclusions with respect to the independent auditor to the full board.

(B) meet to review and discuss the listed company's annual audited financial statements and quarterly financial statements with management and the independent auditor, including reviewing the listed company's specific disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations";

Commentary: Meetings may be telephonic if permitted under applicable corporate law; polling of audit committee members, however, is not permitted in lieu of meetings.

With respect to closed-end funds, Section 303A.07(b)(iii)(B) requires that the audit committee meet to review and discuss the fund's annual audited financial statements and semi-annual financial statements. In addition, if a closed-end fund chooses to voluntarily include the section "Management's Discussion of Fund Performance" in its Form N-CSR, then the audit committee is required to meet to review and discuss it.

(C) discuss the listed company's earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies;

Commentary: The audit committee's responsibility to discuss earnings releases, as well as financial information and earnings guidance, may be done generally (i.e., discussion of the types of information to be disclosed and the type of presentation to be made). The audit committee need not discuss in advance each earnings release or each instance in which a listed company may provide earnings guidance.

(D) discuss policies with respect to risk assessment and risk management;

Commentary: While it is the job of the CEO and senior management to assess and manage the listed 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 listed company's major financial risk exposures and the steps management has taken to monitor and control such exposures. The audit committee is not required to be the sole body responsible for risk assessment and management, but, as stated above, the committee must discuss guidelines and policies to govern the process by which risk assessment and management is undertaken. Many companies, particularly financial companies, manage and assess their risk through mechanisms other than the audit committee. The processes these companies have in place should be reviewed in a general manner by the audit committee, but they need not be replaced by the audit committee.

(E) meet separately, periodically, with management, with internal auditors (or other personnel responsible for the internal audit function) and with independent auditors;

Commentary: 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. As noted herein, all listed companies must have an internal audit function. These separate sessions may be more productive than joint sessions in surfacing issues warranting committee attention.

(F) review with the independent auditor any audit problems or difficulties and management's response;

Commentary: 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 listed company. The review should also include discussion of the responsibilities, budget and staffing of the listed company's internal audit function.

(G) set clear hiring policies for employees or former employees of the independent auditors; and

Commentary: 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 listed company they audit.

(H) report regularly to the board of directors.

Commentary: The audit committee should review with the full board any issues that arise with respect to the quality or integrity of the listed company's financial statements, the listed company's compliance with legal or regulatory requirements, the performance and independence of the listed company's independent auditors, or the performance of the internal audit function.

General Commentary to Section 303A.07(b[c]): While the fundamental responsibility for the listed 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 listed company's selection or application of accounting principles, and major issues as to the adequacy of the listed 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 listed company; and (D) the type and presentation of information to be included in earnings press releases (paying particular attention to any use of "pro forma," or "adjusted" non-GAAP, information), as well as review any financial information and earnings guidance provided to analysts and rating agencies.

Website Posting Requirement: A listed company must make its audit committee charter available on or through its website. A closed-end fund is not required to comply with this website posting requirement.

Disclosure Requirements: A listed company must disclose in its annual proxy statement or, if it does not file an annual proxy statement, in its annual report on Form 10-K filed with the SEC that its audit committee charter is available on or through its website and provide the website address.

(c[d]) Each listed company must have an internal audit function.

Commentary: Listed companies must maintain an internal audit function to provide management and the audit committee with ongoing assessments of the listed company's risk management processes and system of internal control. A listed company may choose to outsource this function to a third party service provider other than its independent auditor.

General Commentary to Section 303A.07: To avoid any confusion, note that the audit committee functions specified in Section 303A.07 are the sole responsibility of the audit committee and may not be allocated to a different committee.

303A.08 Shareholder Approval of Equity Compensation Plans

Shareholders must be given the opportunity to vote on all equity-compensation plans and material revisions thereto, with limited exemptions explained below.

Equity-compensation plans can help align shareholder and management interests, and equity-based awards are often very important components of employee compensation. To provide checks and balances on the potential dilution resulting from the process of earmarking shares to be used for equity-based awards, the Exchange requires that all equity-compensation plans, and any material revisions to the terms of such plans, be subject to shareholder approval, with the limited exemptions explained below.

Definition of Equity-Compensation Plan

An "equity-compensation plan" is a plan or other arrangement that provides for the delivery of equity securities (either newly issued or treasury shares) of the listed company to any employee, director or other service provider as compensation for services. Even a compensatory grant of options or other equity securities that is not made under a plan is, nonetheless, an "equity-compensation plan" for these purposes.

However, the following are not "equity-compensation plans" even if the brokerage and other costs of the plan are paid for by the listed company:

- Plans that are made available to shareholders generally, such as a typical dividend reinvestment plan.

- Plans that merely allow employees, directors or other service providers to elect to buy shares on the open market or from the listed company for their current fair market value, regardless of whether:

  - the shares are delivered immediately or on a deferred basis; or

  - the payments for the shares are made directly or by giving up compensation that is otherwise due (for example, through payroll deductions).

Material Revisions

A "material revision" of an equity-compensation plan includes (but is not limited to), the following:

- A material increase in the number of shares available under the plan (other than an increase solely to reflect a reorganization, stock split, merger, spin-off or similar transaction).

  - If a plan contains a formula for automatic increases in the shares available (sometimes called an "evergreen formula") or for automatic grants pursuant to a formula, each such increase or grant will be considered a revision requiring shareholder approval *unless* the plan has a term of not more than ten years.

This type of plan (regardless of its term) is referred to below as a "formula plan." Examples of automatic grants pursuant to a formula are (1) annual grants to directors of restricted stock having a certain dollar value, and (2) "matching contributions," whereby stock is credited to a participant's account based upon the amount of compensation the participant elects to defer.

- If a plan contains no limit on the number of shares available and is not a formula plan, then each grant under the plan will require separate shareholder approval regardless of whether the plan has a term of not more than ten years.

This type of plan is referred to below as a "discretionary plan." A requirement that grants be made out of treasury shares or repurchased shares will not, in itself, be considered a limit or pre-established formula so as to prevent a plan from being considered a discretionary plan.

- An expansion of the types of awards available under the plan.

- A material expansion of the class of employees, directors or other service providers eligible to participate in the plan.

- A material extension of the term of the plan.

- A material change to the method of determining the strike price of options under the plan.

- A change in the method of determining "fair market value" from the closing price on the date of grant to the average of the high and low price on the date of grant is an example of a change that the Exchange would not view as material.

- The deletion or limitation of any provision prohibiting repricing of options. See the next section for details.

Note that an amendment will not be considered a "material revision" if it curtails rather than expands the scope of the plan in question.

Repricings

A plan that does not contain a provision that specifically *permits* repricing of options will be considered for purposes of this listing standard as *prohibiting* repricing. Accordingly any actual repricing of options will be considered a material revision of a plan even if the plan itself is not revised. This consideration will not apply to a repricing through an exchange offer that commenced before the date this listing standard became effective.

"Repricing" means any of the following or any other action that has the same effect:

- Lowering the strike price of an option after it is granted.

- Any other action that is treated as a repricing under generally accepted accounting principles.

- Canceling an option at a time when its strike price exceeds the fair market value of the underlying stock, in exchange for another option, restricted stock, or other equity, unless the cancellation and exchange occurs in connection with a merger, acquisition, spin-off or other similar corporate transaction.

Exemptions

This listing standard does not require shareholder approval of employment inducement awards, certain grants, plans and amendments in the context of mergers and acquisitions, and certain specific types of plans, all as described below. However, these exempt grants, plans and amendments may be made only with the approval of the listed company's independent compensation committee or the approval of a majority of the listed company's independent directors. Companies must also notify the Exchange in writing when they use one of these exemptions.

Employment Inducement Awards

An employment inducement award is a grant of options or other equity-based compensation as a material inducement to a person or persons being hired by the listed company or any of its subsidiaries, or being rehired following a bona fide period of interruption of employment. Inducement awards include grants to new employees in

connection with a merger or acquisition. Promptly following a grant of any inducement award in reliance on this exemption, the listed company must disclose in a press release the material terms of the award, including the recipient(s) of the award and the number of shares involved.

Mergers and Acquisitions

Two exemptions apply in the context of corporate acquisitions and mergers.

First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity-compensation awards to reflect the transaction.

Second, shares available under certain plans acquired in corporate acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exemption applies to situations where a party that is not a listed company following the transaction has shares available for grant under pre-existing plans that were previously approved by shareholders. A plan adopted in contemplation of the merger or acquisition transaction would not be considered "pre-existing" for purposes of this exemption.

Shares available under such a pre-existing plan may be used for post-transaction grants of options and other awards with respect to equity of the entity that is the listed company after the transaction, either under the pre-existing plan or another plan, without further shareholder approval, so long as:

- the number of shares available for grants is appropriately adjusted to reflect the transaction;
- the time during which those shares are available is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction; and
- the options and other awards are not granted to individuals who were employed, immediately before the transaction, by the post-transaction listed company or entities that were its subsidiaries immediately before the transaction.

Any shares reserved for listing in connection with a transaction pursuant to either of these exemptions would be counted by the Exchange in determining whether the transaction involved the issuance of 20% or more of the listed company's outstanding common stock and thus required shareholder approval under Listed Company Manual Section 312.03(c).

These merger-related exemptions will not result in any increase in the aggregate potential dilution of the combined enterprise. Further, mergers or acquisitions are not routine occurrences, and are not likely to be abused. Therefore, the Exchange considers both of these exemptions to be consistent with the fundamental policy involved in this standard.

Qualified Plans, Parallel Excess Plans and Section 423 Plans

The following types of plans (and material revisions thereto) are exempt from the shareholder approval requirement:

- plans intended to meet the requirements of Section 401(a) of the Internal Revenue Code (e.g., ESOPs);
- plans intended to meet the requirements of Section 423 of the Internal Revenue Code; and
- "parallel excess plans" as defined below.

Section 401(a) plans and Section 423 plans are already regulated under the Internal Revenue Code and Treasury regulations. Section 423 plans, which are stock purchase plans under which an employee can purchase no more than $25,000 worth of stock per year at a plan-specified discount capped at 15%, are also required by the Internal Revenue Code to receive shareholder approval. While Section 401(a) plans and parallel excess plans are not required to be approved by shareholders, U.S. GAAP requires that the shares issued under these plans be "expensed" (i.e., treated as a compensation expense on the income statement) by the company issuing the shares.

An equity-compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable Section 401(a) plan, Section 423 plan or parallel excess plan that the listed company provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, are also exempt from shareholder approval under this section.

The term "parallel excess plan" means a plan that is a "pension plan" within the meaning of the Employee Retirement Income Security Act ("ERISA") that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a) to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may hereafter be enacted. A plan will not be considered a parallel excess plan unless (1) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limits that may hereafter be enacted); (2) its terms are substantially the same as the qualified plan that it parallels except for the elimination of the limits described in the preceding sentence and the limitation described in clause (3); and (3) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.

Transition Rules

Initial Limited Transition Period

Except as provided below, a plan that was adopted before [the date of the Securities and Exchange Commission order approving this listing standard]June 30, 2003 will not be subject to shareholder approval under this listing standard unless and until it is materially revised.

In the case of a discretionary plan (as defined in "Material Revisions" above), whether or not previously approved by shareholders, additional grants may not be made [after the effective date of this listing standard] without further shareholder approval [only for a limited transition period, defined below, and then only in a manner consistent with past practice. See also "Material Revisions" above]. In applying this rule, if a plan can be separated into a discretionary plan portion and a portion that is not discretionary, the non-discretionary portion of the plan can continue to be used separately, under the appropriate transition rule. For example, if a shareholder-approved plan permits both grants pursuant to a provision that makes available a specific number of shares, and grants pursuant to a provision authorizing the use of treasury shares without regard to the specific share limit, the former provision (but not the latter) may continue to be used after the transition period, under the general rule above.

Similarly, in the case of a formula plan (as defined in "Material Revisions" above) that either (1) has not previously been approved by shareholders or (2) does not have a term of ten years or less, additional grants may not be made [after the effective date of this listing standard] without further shareholder approval [only for a limited transition period, defined below].

[The limited transition period described in the preceding two paragraphs will end upon the first to occur of:

- the listed company's next annual meeting at which directors are elected that occurs more than 180 days after the effective date of this listing standard;
- the first anniversary of the effective date of this listing standard; and
- the expiration of the plan.]

A shareholder-approved formula plan may continue to be used [after the end of this transition period] if it is amended to provide for a term of ten years or less from the date of its original adoption or, if later, the date of its most recent shareholder approval. Such an amendment [may be made before or after the effective date of this listing standard, and] would not itself be considered a "material revision" requiring shareholder approval.

In addition, a formula plan may continue to be used, without shareholder approval, if the grants after [the effective date of this listing standard] June 30, 2003 are made *only* from the shares available immediately before the effective date, in other words, based on formulaic increases that occurred prior to [such effective date] June 30, 2003.

Ongoing Transition Period for a Foreign Private Issuer Whose Status Changes

To the extent that a listed foreign private issuer ceases to qualify as such under SEC rules (so that it is required to file on domestic forms with the SEC) and as a result of such change in status becomes subject to Section 303A.08 for the first time, such listed company will be granted a limited transition period with respect to discretionary plans and formula plans that do not comply with Section 303A.08 that were in place prior to the date that its status changed so that additional grants may be made after the date that its status changed without shareholder approval. This transition period will end upon the later to occur of:

- six months after the date as of which the listed company fails to qualify for foreign private issuer status pursuant to SEC Rule 240.3b-4. Under SEC Rule 240.3b-4, a company tests its status as a foreign private issuer on an annual basis at the end of its most recently completed second fiscal quarter (hereinafter, for purposes of this subsection, the "Determination Date"); and

- the first annual meeting after the Determination Date,

but, in any event no later than one year after the Determination Date.

A shareholder-approved formula plan may continue to be used after the end of this transition period if it is amended to provide for a term of ten years or less from the date of its original adoption or, if later, the date of its most recent shareholder approval. Such an amendment may be made before or after the Determination Date, and would not itself be considered a "material revision" requiring shareholder approval.

In addition, a formula plan may continue to be used, without shareholder approval, if the grants after the date that the listed company's status changed are made only from the shares available immediately before the Determination Date, in other words, based on formulaic increases that occurred prior to the Determination Date.

303A.09 Corporate Governance Guidelines

Listed companies must adopt and disclose corporate governance guidelines.

Commentary: No single set of guidelines would be appropriate for every listed 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 and the charters of its most important committees (including at least the audit, and if applicable, compensation and nominating committees). The listed company must state in its annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the SEC 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 listed company's policies and procedures, as well as more conscientious adherence to them by directors and management.]

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

- Director qualification standards. These standards should, at minimum, reflect the independence requirements set forth in Sections 303A.01 and 303A.02. Companies may also 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 listed 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. 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.

Website Posting Requirement: A listed company must make its corporate governance guidelines available on or through its website.

Disclosure Requirements: A listed company must disclose in its annual proxy statement or, if it does not file an annual proxy statement, in its annual report on Form 10-K filed with the SEC that its corporate governance guidelines are available on or through its website and provide the website address.

303A.10 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.

Commentary: No code of business conduct and ethics can replace the thoughtful behavior of an ethical director, officer or employee. However, 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.

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 listed 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. [Each listed company's website must include its code of business conduct and ethics. The listed company must state in its annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the SEC, that the foregoing information is available on its website and that the information is available in print to any shareholder who requests it.]

Each listed 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 listed 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 listed 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, officers and directors should maintain the confidentiality of information entrusted to them by the listed 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, officer and director should endeavor to deal fairly with the listed company's customers, suppliers, competitors and employees. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice. Listed companies may write their codes in a manner that does not alter existing legal rights and obligations of companies and their employees, such as "at will" employment arrangements.

- Protection and proper use of listed company assets. All employees, officers and directors should protect the listed company's assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on the listed company's profitability. All listed company assets should be used for legitimate business purposes.

- Compliance with laws, rules and regulations (including insider trading laws). The listed 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 decisively.

- Encouraging the reporting of any illegal or unethical behavior. The listed company should proactively promote ethical behavior. The listed 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 listed company must ensure that employees know that the listed company will not allow retaliation for reports made in good faith.

Website Posting Requirement: A listed company must make its code of business conduct and ethics available on or through its website.

Disclosure Requirements: A listed company must disclose in its annual proxy statement or, if it does not file an annual proxy statement, in its annual report on Form 10-K filed with the SEC that its code of business conduct and ethics is available on or through its website and provide the website address.

To the extent that a listed company's board or a board committee determines to grant any waiver of the code of business conduct and ethics for an executive officer or director, the

waiver must be disclosed to shareholders within four business days of such determination. Disclosure must be made by distributing a press release, providing website disclosure, or by filing a current report on Form 8-K with the SEC.

303A.11 Foreign Private Issuer Disclosure

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

Commentary: Foreign private issuers must make their U.S. investors aware of the significant ways in which their corporate governance practices differ from those required of domestic companies under NYSE listing standards. However, foreign private issuers are not required to present a detailed, item-by-item analysis of these differences. Such a disclosure would be long and unnecessarily complicated. Moreover, this requirement is not intended to suggest that one country's corporate governance practices are better or more effective than another. The Exchange believes that U.S. shareholders should be aware of the significant ways that the governance of a listed foreign private issuer differs from that of a U.S. listed company. The Exchange underscores that what is required is a brief, general summary of the significant differences, not a cumbersome analysis.

[Listed foreign private issuers may provide this disclosure on their website (provided it is in the English language and accessible from the United States) and/or in their annual report as distributed to shareholders in the United States in accordance with Sections 103.00 and 203.01 of the Listed Company Manual (again, in the English language). If the disclosure is only made available on the web site, the annual report shall so state and provide the web address at which the information may be obtained.]

Disclosure Requirement: A foreign private issuer that is required to file an annual report on Form 20-F with the SEC must include the statement of significant differences in that annual report. All other foreign private issuers may either (i) include the statement of significant differences in an annual report filed with the SEC or (ii) make the statement of significant differences available on or through the listed company's website. If the statement of significant differences is made available on or through the listed company's website, the listed company must disclose that fact in its annual report filed with the SEC and provide the website address.

303A.12 Certification Requirements

(a) Each listed company CEO must certify to the NYSE each year that he or she is not aware of any violation by the listed company of NYSE corporate governance listing standards, qualifying the certification to the extent necessary.

Commentary: The CEO's annual certification regarding the NYSE's corporate governance listing standards will focus the CEO and senior management on the listed company's compliance with the listing standards. [Both this certification to the NYSE, including any qualifications to that certification, and any CEO/CFO certifications

required to be filed with the SEC regarding the quality of the listed company's public disclosure, 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 annual report on Form 10-K filed with the SEC.]

(b) 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 provisions of this Section 303A.

(c) Each listed company must submit an executed Written Affirmation annually to the NYSE in the form specified by the NYSE. In addition, each listed company must submit an interim Written Affirmation as and when required by the interim Written Affirmation form specified by the NYSE [each time a change occurs to the board or any of the committees subject to Section 303A. The annual and interim Written Affirmations must be in the form specified by the NYSE].

303A.13 Public Reprimand Letter

The NYSE may issue a public reprimand letter to any listed company that violates a NYSE listing standard.

Commentary: Suspending trading in or delisting a listed 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. For this reason it is appropriate for the NYSE to have the ability to apply a lesser sanction to deter companies from violating its corporate governance (or other) listing standards. Accordingly, the NYSE may issue a public reprimand letter to any listed company, regardless of type of security listed or country of incorporation[,] that it determines has violated a NYSE listing standard. For companies that repeatedly or flagrantly violate NYSE listing standards, suspension and delisting remain the ultimate penalties. For clarification, this lesser sanction is not intended for use in the case of companies that fall below the financial and other continued listing standards provided in Chapter 8 of the Listed Company Manual or that fail to comply with the audit committee standards set out in Section 303A.06. The processes and procedures provided for in Chapter 8 govern the treatment of companies falling below those standards.

[303A.14 Website Requirement

Listed companies must have and maintain a publicly accessible website.

Commentary: To the extent that a listed company is subject to the requirements of Sections 303A.04, 303A.05, 303A.07(c), 303A.09 or 303A.10, each listed company's website must include a printable version of the applicable charters of its compensation, nominating and audit committees, as well as its corporate governance guidelines and code of business conduct and ethics. In addition, a listed company that is a foreign private issuer is required to include the disclosure required by Section 303A.11 on its

website in the English language and such website must be accessible from the United States.

In the case of a listed company that is a closed-end fund, if the company does not maintain its own website, the company may utilize a website that the company is allowed to use to satisfy the website posting requirement in Exchange Act Rule 16a-3(k).]

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The following will be the operative text of Section 307.00 effective through December 31, 2009:

307.00 Related Party Transactions

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The following will be the operative text of Section 307.00 effective commencing January 1, 2010:

307.00 [Related Party Transactions] Website Requirement

[In the late 1950's, the Exchange adopted a policy, heretofore referred to as its conflicts of interest policy, which generally discouraged the existence of transactions between a listed company and its officers and directors. Under that policy, the Exchange did not attempt to evaluate any particular situation for the purpose of judging whether or not it truly served the best interests of the company and its shareholders. The Exchange realized that it was not in a position to take on so difficult a task as to each of its many listed companies. Instead, it chose simply to discourage all such material transactions that came to its attention and often did so by requiring an agreement that the situation be eliminated within a reasonable time, usually two to five years.

At the time that policy was adopted, audit committees, as mandated by the Exchange in 1978 for virtually all of its listed companies, were the rare exception within the listed company community and non-management directors were far less numerous than they are today. Furthermore, the SEC's disclosure rules did not then require the extensive public disclosure of important relationships between the issuer and officers, directors, major shareholders, etc., that is required today. (See, generally, Item 404 of Regulation S-K.)

In the environment that has resulted from these positive changes, it is no longer deemed appropriate for the Exchange to require the elimination of related party transactions. The Exchange continues to believe that a publicly-owned company of the size and character appropriate for listing on the Exchange should be able to operate on its own merit and credit standing free from the suspicions that may arise when business transactions are consummated with insiders. However, the Exchange recognizes that the company's management is in the best position to evaluate each such relationship intelligently and objectively.

The Exchange therefore believes that the Audit Committee, made up of non-management directors at the board of director's level of virtually every domestic listed company, should be particularly well suited to address related party transactions that may arise

within the company. (See paragraph 303.00 for a full statement of the Exchange's Audit Committee Policy.) The directors serving on such committee, and independent directors generally, can be expected to be thoroughly familiar with all of the facts and circumstances that should properly be considered in evaluating a particular situation. Given their independence from management, they should be expected to judge objectively the pros and cons of any related party transactions and to make a fair and impartial review that will permit those situations which truly are advantageous to the corporation and its security holders to continue. Public disclosure under SEC regulations will, of course, continue to be applicable to those situations which are allowed to continue.

For all of these reasons, the Exchange's Board of Directors, in March 1983, adopted the following modified statement concerning related party transactions: "The Exchange believes that the review and oversight of such situations is best left to the discretion of listed corporations and corporations applying for listing on the NYSE. While no particular method of resolution is suggested, the Audit committee or a comparable body could be considered as the forum for review and oversight of potential conflicts of interest situations."

The Exchange expects the listed corporation and corporations applying to list to discharge their responsibility to monitor and review such situations in an appropriate fashion. Corporations applying for listing on the NYSE will be asked to confirm that they will appropriately review and oversee related party transactions on an on-going basis. In addition, the Exchange will continue to review proxy statements and other SEC filings disclosing related party transactions and to send reminder notices where these situations seem to persist.

(It is important to note that there are certain related party transactions which continue to require shareholder approval under Exchange policy. A review of paragraph 312.00- "Shareholder Approval Policy" -should therefore be done in tandem with any consideration of the matters covered in this section.)]

Listed companies must have and maintain a publicly accessible website.

Commentary: To the extent that a listed company is required under any applicable provision of the Listed Company Manual to make documents available on or through its website, such website must be accessible from the United States, must clearly indicate in the English language the location of such documents on the website and such documents must be available in a printable version in the English language.

If a closed-end fund does not maintain its own website, it may utilize a website that it is allowed to use to satisfy the website posting requirement in Exchange Act Rule 16a-3(k).

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