

September 8, 2009

NYSE Proposes Amendments to Corporate Governance Listing Standards

The NYSE recently filed proposed amendments to the listed company corporate governance requirements to clarify disclosure requirements, codify interpretations, and replace certain disclosure requirements by incorporating into the NYSE's corporate governance standards the applicable disclosure requirements of Regulation S-K. A summary of the proposed amendments is included below:

**Corporate Governance Disclosures**

The proposed amendments would change certain disclosure requirements, including those relating to the controlled company exemption, director independence, compensation committee reports and audit committee reports, to incorporate Item 407 of Regulation S-K, which contains the consolidated corporate governance disclosure requirements adopted by the SEC in 2006.

**Requirements for Meetings of Non-Management Directors**

The proposed amendments would clarify that the requirement that companies hold regular meetings of non-management directors can be satisfied by holding regular meetings of only independent directors. The proposed amendments also clarify that all interested parties, not only shareholders, must be able to communicate their concerns to the presiding director, or the non-management or independent directors as a group.

**Audit Committees**

The proposed amendments would clarify that if an audit committee member simultaneously serves on the audit committees of more than three public companies, then the board must determine that such service would not impair the ability of such member to effectively serve on the listed company's audit committee, and must disclose such determination whether or not the listed company limits the number of audit committees on which its audit committee members serve to three or less.

**Transition Periods**

The proposed amendments specify and/or clarify certain transition periods for compliance with the NYSE's governance requirements relating to director independence and board committees in connection with an initial public offering, spin-off or carve out, and companies listing upon emergence from bankruptcy, transferring from another market, ceasing to be a controlled company or ceasing to be a foreign private issuer.

Proposed amendments would provide a limited transition period for listed companies that cease to qualify as foreign private issuers under the SEC rules and as a result of such change in status become subject to Section 303A.08, which requires shareholder approval of equity compensation plans. During the transition period, which lasts until the later of six months from the date on which the company fails to qualify for foreign private issuer status under Exchange Act Rule 3b-4 (the "Determination Date") and the company's first annual meeting following the Determination Date, but no longer than one year, additional equity grants may be made without shareholder approval under discretionary and formula equity plans that were not shareholder approved (and therefore do not comply with Section 303A.08), so long as such equity plans were in place prior to the date of such listed company's status change.

**Code of Business Conduct and Ethics**

Section 303A.10 requires that a listed company disclose any waiver granted to executive officers and directors of its code of business conduct and ethics. The proposed amendments specify that the waiver must be disclosed to shareholders within four business days of such determination (as opposed to the guidance currently provided by 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) 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.

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