

(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 disclose these determinations.

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. 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 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. Of course in no event can any current employee of the listed company be deemed independent of management.

The basis for a board determination that a relationship is not material must be disclosed in the 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 (except where there is a presumption of non-independence, as described in the commentary to Section 303A(2)(b)). 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.

(b) In addition:

(i) A director who receives, or whose immediate family member receives, more than \$100,000 per year 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), is presumed not to be independent until five years after he or she ceases to receive more than \$100,000 per year in such compensation.

Commentary: A listed company's board may negate this presumption with respect to a director if the board determines (and no independent director dissents) that, based upon the relevant facts and circumstances, such compensatory relationship is not material. Any affirmative determination of independence made by the board in these circumstances must be specifically explained in the listed company's proxy statement, or, if the company does not file a proxy statement, in the company's annual report filed on Form 10-K with the SEC, and cannot be covered by a categorical standard adopted in accordance with the commentary to Section 303A(2)(a). Compensation received by a director for former service as an interim Chairman or CEO does not need to be considered as a factor by a board in determining independence under this presumption. If a person who received more than \$100,000 per year in direct compensation from a listed company dies or becomes incapacitated, the presumption of non-independence applicable to his or her immediate family members will cease immediately upon such death or determination of incapacity.

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

(iii) A director who is employed, or whose immediate family member is employed, as an executive officer of another company where any of the listed company's present executives serves on that company's compensation

committee is not "independent" until five years after the end of such service or the employment relationship.

(iv) A director who is an executive officer or an employee, or whose immediate family member is an executive officer, of another company (A) that accounts for at least 2% or \$1 million, whichever is greater, of the listed company's consolidated gross revenues, or (B) for which the listed company accounts for at least 2% or \$1 million, whichever is greater, of such other company's consolidated gross revenues, in each case is not "independent" until five years after falling below such threshold.

General Commentary to Section 303A(2)(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.

Transition Rule. During the five years immediately following [insert the effective date of this listing standard], each five year "look back" period referenced in sub-paragraphs (b)(i) through (b)(iv) shall instead be the period since [insert effective date of this listing standard]. For example, if a director received in excess of \$100,000 per year in direct compensation from a listed company during the year prior to [insert effective date of this listing standard], there will be no required presumption that the director is not independent unless such compensatory relationship extended past [insert effective date of this listing standard].

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

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 company officers (as that term is defined in Rule 16a-1(f) under the Securities Act of 1933), 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. There need not be a single presiding director at all executive