

to investors? Should companies be required to provide investors a copy of the charter upon request?

5. We propose to require disclosure of any instances where a member of a company's nominating committee did not satisfy the applicable listing requirements for independence. In addition, we propose to require similar disclosure for unlisted companies. We request comment on whether the disclosures will help inform investors about the independence of the nominating committee. If the markets do not adopt the proposed amendments to the listing standards, are there disclosures that we could require that would achieve the same purposes? Should we require companies whose securities are not listed on an exchange or quoted in the Nasdaq Stock Market to disclose whether the members of their nominating committee, if any, meet any of the independence definitions of the proposed amendments to the listing standards? Is it appropriate to let issuers choose which definition? Should disclosure be required even if the noncompliance has been cured by the time the proxy statement is prepared?

6. We propose to require disclosure concerning a nominating committee's policy with regard to the consideration of security holder recommendations. If a committee has no policy, should we require the company to disclose the reason it does not have a policy? In the absence of a formal policy, are there other disclosures a company should be required to provide to investors to help them understand the standard(s) a committee uses in determining a suitable candidate?

7. Where security holders have the ability to recommend a nominee for a company's board of directors, meaningful participation by security holders should be facilitated by disclosure of information regarding the process for security holder nominations. As such, we have proposed to require disclosure of the procedures for submitting recommendations. Should we require disclosure during the year of any changes made to the procedure, for example in the next Form 10-Q or Form 10-QSB or on Form 8-K?

8. We have proposed requiring disclosure of information regarding criteria used by a nominating committee to screen nominee candidates and the minimal qualifications that the committee believes must be met by a nominee. Are there other eligibility requirements or qualifications about which investors should be informed? Should we require the company to disclose when it chooses candidates who do not meet the criteria? Should

there be a specific disclosure requirement as to whether the company applies the same criteria to candidates recommended by security holders as to company nominees?

9. We have proposed that companies be required to describe the source of each of their nominees for director other than nominees who are executive officers or directors standing for re-election—including the name of each source—and their nominating committee's process for identifying and evaluating candidates. In addition to the name of each candidate's sponsor, should we require disclosure of any financial interest between the candidate and sponsor? Should we require disclosure of any other interest? Is the name of the source important to security holders? Instead, should we require disclosure of the person's title (e.g., chief executive officer) or simply whether the source is an officer or director of the company? Should we require the name of the source only where the source is a director of the company, an employee of the company, or related to a director or employee of the company? If the source is not a director, an employee, or related to a director or employee, should we permit the source to be identified by category rather than name (e.g., security holder, third party firm paid by the company)? Are the proposed exceptions to the requirement appropriate?

10. We have proposed requiring disclosure of information regarding the function performed by any third parties paid by the company. Should we require a company to disclose the methodology the third party uses to select candidates? Should we require a company to identify any such third parties?

11. We propose to require disclosure regarding candidates that were recommended by certain security holders and rejected by the nominating committee. Would this type of disclosure raise privacy issues for rejected candidates, even if the candidates were not specifically named in the company's disclosure? Would it raise privacy issues for the recommending security holders? The proposed disclosure requirements with regard to rejected security holder-recommended candidates would not preclude a company from naming the candidates, though such disclosure would not be required under the proposed rule. Should the rule specify that companies should not disclose the names of rejected candidates? Should the rule specify that companies must include the name of any rejected candidate who consents to being so

identified in the company's proxy statement?

12. Are the proposed threshold requirements for a security holder recommendation that would trigger additional disclosure requirements by the company (*i.e.*, recommendations from security holders that have beneficially held more than 3% of the company's securities for at least one year) appropriate? If not, what ownership threshold, if any, would be appropriate (e.g., no threshold, 1%, 2%, 4%, 5%, or higher) and what holding period, if any, would be appropriate (e.g., no threshold, 2 years, 3 years, 4 years, or longer)? Should we use a different threshold, such as the three, four, or five largest security holders who are not directors or officers of the company? As proposed, the rules would not require that the nominating security holder indicate an intent to continue to own the securities for any specified period of time. Should we include such a requirement? If so, what is the appropriate period over which the security holder must intend to continue to own the securities (e.g., through the date of the related security holder meeting, six months after the recommendation, one year after the recommendation, or longer)? Is the proposed method to determine whether a security holder or group of security holders meets the threshold requirements to trigger additional disclosure by the company appropriate? For example, are the means of proving ownership appropriate? If not, what would be a more appropriate means? Is it appropriate to calculate ownership as of the date of the recommendation? If not, what other date would be more appropriate? Should we include a specific method of determining beneficial ownership for purposes of this disclosure item? For example, should securities underlying options be included or excluded for purposes of calculating the ownership threshold?

13. Would the proposed disclosure requirements have unintended adverse effects on the nominating process? Would they increase the burdens on members of nominating committees or discourage service on nominating committees? If so, please provide specific reasons supporting your responses to these questions.

B. Disclosure Regarding the Ability of Security Holders To Communicate With the Board of Directors

1. Necessity for the Proposal

During the past proxy season, as well as in the recent review of the proxy rules relating to the nomination and