

term board of directors means the supervisory or non-management board.

(3) In the case of a listed issuer that is a limited partnership or limited liability company where such entity does not have a board of directors or equivalent body, the term board of directors means the board of directors of the managing general partner, managing member or equivalent body.

(4) The term control (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(5) The term dual holding companies means two foreign private issuers that:

(i) Are organized in different national jurisdictions;

(ii) Collectively own and supervise the management of one or more businesses which are conducted as a single economic enterprise; and

(iii) Do not conduct any business other than collectively owning and supervising such businesses and activities reasonably incidental thereto.

(6) The term executive officer has the meaning set forth in § 240.3b-7.

(7) The term foreign private issuer has the meaning set forth in § 240.3b-4(c).

(8) The term indirect acceptance by a member of an audit committee of any consulting, advisory or other compensatory fee includes acceptance of such a fee by a spouse, a minor child or stepchild or a child or stepchild sharing a home with the member or by an entity in which such member is a partner, member, an officer such as a managing director occupying a comparable position or executive officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the issuer or any subsidiary of the issuer.

(9) The terms listed and listing refer to securities listed on a national securities exchange or listed in an automated inter-dealer quotation system of a national securities association or to issuers of such securities. Instructions to § 240.10A-3.

1. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v) and (c)(3)(vi) of this section do not conflict with, and do not affect the application of, any requirement or ability under a listed issuer's governing law or documents or other home country legal

or listing provisions that requires or permits shareholders to ultimately vote on, approve or ratify such requirements. The requirements instead relate to the assignment of responsibility as between the audit committee and management. In such an instance, however, if the listed issuer provides a recommendation or nomination regarding such responsibilities to shareholders, the audit committee of the listed issuer, or body performing similar functions, must be responsible for making the recommendation or nomination.

2. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v), (c)(3)(vi) and Instruction 1 of this section do not conflict with any legal or listing requirement in a listed issuer's home jurisdiction that prohibits the full board of directors from delegating such responsibilities to the listed issuer's audit committee or limits the degree of such delegation. In that case, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law, including submitting nominations or recommendations to the full board.

3. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v) and (c)(3)(vi) of this section do not conflict with any legal or listing requirement in a listed issuer's home jurisdiction that vests such responsibilities with a government entity or tribunal. In that case, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law.

4. For purposes of this section, the determination of a person's beneficial ownership must be made in accordance with § 240.13d-3.

#### 2. Compliance:

(a) Certification: Initially, issuers listed on the Boston Stock Exchange or issuers applying for listing on the Exchange shall submit a statement indicating compliance with this Rule by the dates of effectiveness indicated below, and annually thereafter, in conjunction with the filing of the issuer's annual audited financial statement. Such issuers shall inform the Exchange promptly in the event of any of the following:

(1) A change in membership of any member of the audit committee, and a statement indicating compliance with this Rule as it pertains to any new member of such committee;

(2) Any event that would materially alter the independence of the audit committee or otherwise violate any of

the Rules set forth herein or SEC Rule 10A-3;

(3) Any amendment to the corporate charter of the issuer having any effect on the issuer's audit committee;

(4) Upon the issuers executive officer becomes aware of noncompliance by the issuer with any part of this Rule; and

(5) Any reliance upon any exemption or exclusion from this Rule.

(b) Response to Exchange Inquiries: Listed companies shall promptly respond to any inquiry by the Exchange regarding the companies' audit committee, its independence, or the members thereof.

(c) Enforcement and Opportunity To Cure Defects: A listed issuer that has been deemed not in compliance with this Rule shall be given notice of such non-compliance and given thirty (30) days from the time of notice to either rectify the matter or submit a plan of resolution in writing to the Exchange. Upon submission of such, the Exchange shall determine whether the issuer into complied with this Rule or will comply within a reasonable time, not to exceed six months. If a member of a listed issuer's audit committee ceases to be independent as set forth herein, such issuer may request, in writing, that such member remain on the audit committee until the earlier of the next annual shareholders meeting, or one year from the occurrence of the event that caused the member to be no longer independent, provided however, that the event that caused non-independence was outside such member's reasonable control. In the event that the issuer fails to so comply, the Exchange shall take the following measures:

(1) Thirty (30) days after notice of non-compliance: all securities of the issuer listed on the Exchange shall be suspended from trading pending resolution of the matter.

(2) Sixty (60) days after notice of suspension: all securities of the issuer listed on the Exchange, shall be involuntarily delisted from the Exchange.

(d) Effectiveness: Small business issuers and foreign private issuers must be in compliance with the provisions of this Section 10A by July 31, 2005. All other issuers listed on the Exchange must be in compliance with this Rule no later than the earlier of the issuer's first annual shareholders meeting after January 15, 2004, or in no case later than October 31, 2004.

B. (Reserved for Future Rules Relating to Corporate Governance Standards).

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