

issuer or by any parent or subsidiary of the issuer;

(B) A director who accepts or who has an immediate family member who accepts any payments from the issuer or any parent or subsidiary of the issuer in excess of \$60,000 during the current fiscal year or any of the past three fiscal years, other than compensation for board service, payments arising solely from investments in the issuer's securities, compensation paid to an immediate family member who is an employee of the issuer or a parent or subsidiary of the issuer (but not if such person is an executive officer of the company or any parent or subsidiary of the company), benefits under a tax-qualified retirement plan, or non-discretionary compensation;

(C) A director who is an immediate family member of an individual who is, or during the past three years was employed by the issuer or by any parent or subsidiary of the issuer as an executive officer;

(D) A director who is a partner in, or a controlling shareholder or an executive officer of, any organization to which the issuer made, or from which the issuer received, payments (other than those arising solely from investments in the company's securities) that exceed 5% of the recipient's consolidated gross revenues for that year, or \$200,000, whichever is more, in the current fiscal year or any of the past three fiscal years;

(E) A director of the issuer who is employed as an executive officer of another entity where any of the executive officers of the issuer serve on the compensation committee of such other entity, or if such relationship existed during the past three years; or

(F) A director who is or was a partner or employee of the issuer's outside auditor, and worked on the issuer's audit, during the past three years.

(4) "Sarbanes-Oxley Act" means the Sarbanes-Oxley Act of 2002.

(5) "Small business issuer" means any issuer that meets the definition of that term set out in SEC Rule 12b-2.

#### \* \* \* Interpretations and Policies

.01 No change to text.

.02 **Controlled Companies.** If an issuer relies on a controlled company exemption from the requirements of paragraphs 19(a), 19(c) or 19(d), above, it must disclose in its annual meeting proxy statement that it is a controlled company and provide the basis for that determination.

.03 **General Exemptions from Governance Rules.** The requirements of this rule do not apply to the following entities, as described below:

(1) Limited partnerships and companies in bankruptcies are not required to comply with sections (a), (c) and (d) above.

(2) Closed-end management companies are not required to comply with any provision of this rule other than section (b) above and are only required to comply with that provision to the extent required by SEC Rule 10A-3.

(3) Passive business organizations (such as royalty trusts) or derivatives and special purpose entities that are exempt from the requirements of SEC Rule 10A-3 are not subject to any requirement under this rule.

(4) Foreign issuers will be permitted to comply with their home country practices with respect to corporate governance (and thus are exempt from the requirements of sections (a)-(f), above), except to the extent that SEC Rule 10A-3 requires compliance with specific audit committee requirements.

(5) Issuers listing only preferred or debt securities on the Exchange typically will not be required to adhere to the requirements set out in sections (a)-(f) because they will be subject to the multiple listing exception described in Interpretation .04, below. To the extent required by SEC Rule 10A-3, these issuers will only be required to comply with section (b) above.

.04 **Dual and Multiple Listings.** At any time when an issuer has a class of securities that is listed on a national securities exchange or national securities association subject to requirements substantially similar to those set forth in sections (a)-(d) above, and that class of security has not been suspended from trading on that market, the issuer shall not be required to separately meet the requirements set forth in sections (a)-(d) above with respect to that class of securities or any other class of securities. Governance requirements of other markets will be considered to be substantially similar to the requirements of sections (a)-(d) above if they are adopted by the New York Stock Exchange, the American Stock Exchange or the National Association of Securities Dealers (for the Nasdaq National Market or Small Cap Market) or if they otherwise require, subject to exceptions approved by the Commission, that the issuer maintain (1) a board of directors, a majority of whom are independent directors (50% of whom are independent directors, for a small business issuer); (2) an audit committee, consisting of at least three persons (two persons, for a small business issuer), all of whom are independent directors who meet the

requirements of SEC Rule 10A-3; (3) a written audit committee charter that provides information about the committee's duties and responsibilities; (4) a nominating committee or other body, a majority of whom are independent directors; and (5) a compensation committee or other body, a majority of whom are independent directors.

Similarly, when an issuer has a class of securities that is listed on a national securities exchange or national securities association subject to requirements substantially similar to those set forth in sections (a)-(d) above, and that class of security has not been suspended from trading on that market, a direct or indirect consolidated subsidiary of the issuer, or an at least 50% beneficially-owned subsidiary of the issuer, shall not be required to separately meet the requirements set forth in sections (a)-(d) above with respect to any class of securities it issues, except classes of equity securities (other than non-convertible, non-participating preferred securities) of such subsidiary.

.05 **Transition Periods and Compliance Dates.** Sections (a)-(f) will become effective pursuant to the following schedule:

(1) The audit committee requirements mandated by SEC Rule 10A-3 (and the exception set out in section (b)(1)(B)(ii) in this rule) will become effective as set out in Rule 10A-3.

(2) The other requirements of sections (a)-(f) will become effective two years after the date that they are approved by the Commission. If an issuer has a board with staggered terms, and a change is required with respect to a director whose term does not apply within this two-year period, the issuer will have an additional year to comply with the requirements of section (a).

(3) Except as otherwise required by SEC Rule 10A-3, an issuer listing securities on the Exchange in connection with an initial public offering or transferring from another marketplace that does not have governance standards substantially similar to the standards set out in sections (a)-(f), above, will be required to comply with sections (a)-(f) within two years after listing on the Exchange. An issuer transferring from a market that does have governance standards substantially similar to those set out in sections (a)-(f) above must comply with those provisions at the time that they list; provided, however, that an issuer that transfers during another market's transition period to new governance standards will be allowed to comply with the Exchange's requirements