

(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.

Sec. 804, Board Nominations

(a) Each listed company (except for a controlled company as defined in Commentary .01 to Section 121) must obtain approval of Board of Director nominations either by a Nominating Committee comprised solely of independent directors or by a majority of the independent directors.

(b) Notwithstanding paragraph (a) above, if the Nominating Committee is comprised of at least three members, one director who is not independent as defined in section 121A, and is not a current officer or employee or an immediate family member of such person, may be appointed to the Nominating Committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the company and its shareholders, and the board discloses, in the next annual meeting proxy statement (or in its next annual report on SEC Form 10-K or equivalent if the issuer does not file an annual proxy statement) subsequent to such determination, the nature of the relationship and the reasons for that determination. A director appointed to the Nominating Committee pursuant to this exception may not serve in excess of two years.

(c) Notwithstanding paragraph (a) above, if the Nominating Committee is comprised of at least three members, and if the exception described in paragraph (b) above is not relied upon, one director who owns 20% or more of

the company's common stock or voting power outstanding, and is not independent as defined in section 121A because that director is also an officer, may be appointed to the Nominating Committee if the board determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the next proxy statement subsequent to such determination (or in its next annual report on SEC Form 10-K or equivalent if the issuer does not file an annual proxy statement), the nature of the relationship and the reasons for the determination.

* * * Commentary

.01 If a company is legally required by contract or otherwise to provide third parties with the ability to nominate and/or appoint directors (e.g., preferred stock rights to elect directors upon dividend default, shareholder agreements, management agreements), the selection and nomination of such directors is not subject to approval by the Nominating Committee or a majority of independent directors.

Sec. 805, Executive Compensation

(a) Each listed company (except for a controlled company as defined in Commentary .01 to section 121) must obtain approval of its Chief Executive Officer's compensation either by a Compensation Committee composed of independent directors or by a majority of the independent directors on its Board of Directors. The Chief Executive Officer, in consultation with such Compensation Committee, or a majority of the independent directors on the company's Board of Directors, as applicable, shall recommend to the Board of Directors for its approval compensation for other officers (see Commentary .04 to section 121).

(b) Notwithstanding paragraph (a) above, if the Compensation Committee is comprised of at least three members, one director who is not independent as defined in section 121A, and is not a current officer or employee or an immediate family member of such person, may be appointed to the Compensation Committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the company and its shareholders, and the board discloses, in the next annual meeting proxy statement (or in its next annual report on SEC Form 10-K or equivalent if the issuer does not file an annual proxy statement) subsequent to such