

determination, the nature of the relationship and the reasons for that determination. A director appointed to the Compensation Committee pursuant to this exception may not serve for in excess of two years.

\* \* \* Commentary

.01 The requirement to obtain approval of either the Compensation Committee or a majority of the independent directors does not preclude a company from seeking board ratification or approval as may be required to comply with applicable tax or State corporate laws.

Sec. 806, Stock Option Plans

See Section 711.

Sec. 807, Code of Conduct and Ethics

Each company shall adopt a Code of Conduct and Ethics, applicable to all directors, officers, and employees, which also complies with the definition of a "code of ethics" as set forth in item 406 of SEC Regulation S-K (or item 406 of SEC Regulation S-B with respect to a company which files reports under SEC Regulation S-B).

\* \* \* Commentary

.01 While each company should determine the appropriate standards and guidelines for inclusion in its Code, all Codes must promote honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships; full, fair, accurate, timely, and understandable disclosure in periodic reports and documents required to be filed by the company; compliance with applicable Exchange and governmental rules and regulations; prompt internal reporting of violations of the Code to an appropriate person or persons identified in the Code; and accountability for adherence to the Code.

Sec. 808, Foreign Companies

See Section 110.

Sec. 1009, Continued Listing Evaluation and Follow-Up

(a) The following procedures shall be applied by the Exchange staff to companies identified as being below the Exchange's continued listing policies and standards. Notwithstanding such procedures, when [the Exchange staff deems it] necessary or appropriate:

(i) The Exchange staff may issue a Warning Letter to a company with respect to a minor violation of the Exchange's corporate governance or shareholder protection requirements (other than violations of the

requirements pursuant to Rule 10A-3 under the Securities Exchange Act of 1934); or

(ii) For the protection of investors, the Exchange may immediately suspend trading in any security, and make application to the SEC to delist the security [trading in any security can be suspended immediately, and application made to the SEC to delist the security].

(b) through (i)—No change.

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**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange is proposing to adopt comprehensive enhancements to the corporate governance requirements applicable to listed companies in order to promote accountability, transparency and integrity by such companies. The proposal encompasses significant changes to the following: board of director composition and independence standards, audit committee composition and authority, compensation and nominating committees, and ethics and disclosure obligations.<sup>5</sup>

*Increased Board Independence*

Most listed companies would be required to have a board of directors comprised of a majority of independent directors. In addition, the definition of "independent" would be tightened. Each listed company's board of directors would be required to affirmatively determine that an independent director has no material relationship with the company that would interfere with the

exercise of independent judgment. However, certain specified relationships would preclude a board finding of independence. The current rules already specify certain of these relationships and the proposed changes would expand and clarify the types of relationships included in this category. Finally, independent directors serving on the audit committee would be subject to heightened requirements mandated by SEC Rule 10A-3, as described later.

Pursuant to the proposed rule change, the following individuals would not qualify as independent directors:

- Current officers and employees of the company or its subsidiaries.
- An individual who is or was employed by the company or any parent or subsidiary of the company during the past three years.
- An individual who accepts (or whose immediate family member<sup>6</sup> accepts) any payment from the company (or any parent or subsidiary of the company) in excess of \$60,000 during the current or previous fiscal year. Compensation for board service, payments arising solely from investments in the company's securities, compensation paid to an immediate family member who is a non-executive officer employee of the company (or any parent or subsidiary of the company), or benefits under a tax-qualified retirement plan or non-discretionary compensation will not be included in the \$60,000.
- An individual who is a partner, controlling shareholder or executive officer of any organization to which or from which the company made or received payments that exceed five percent of the recipient's consolidated gross revenues or \$200,000 (whichever is more) in any of the most recent three fiscal years.
- An individual who is an immediate family member of an individual who is or has been employed by the company (or any parent or subsidiary of the company) as an executive officer during any of the past three years.
- An individual who is an executive officer of another entity where any of the listed company's executive officers serve on the compensation committee.
- An individual who is or was a partner or employee of the company's outside auditor, and worked on the audit engagement, during any of the past three fiscal years.

In view of the significant difficulties which many listed companies may face

<sup>5</sup> The Commission notes that the Amex has committed to consider appropriate revisions to its proposed rule change to achieve consistency with corporate governance listing standards approved by the Commission for other SROs. Telephone conference between Claudia Corwley, Vice President, Listing Qualification, Amex, and Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, on October 27, 2003.

<sup>6</sup> The definition of "immediate family member" would be expanded to include anyone who resides in the director's home or is financially dependent upon the director, as well as the currently specified family relationships.