

balance of any grace period afforded by the other market. Companies transferring from other listed markets that do not have a substantially similar requirement would be afforded one year from the date of listing on Nasdaq. The rule would stipulate that this transition period is not intended to supplant any applicable requirements of Rule 10A-3 under the Exchange Act.

Compliance with the limitations on corporate governance exemptions to foreign private issuers would be required by July 31, 2005. However, the requirement that a foreign issuer disclose the receipt of a corporate governance exemption from Nasdaq would apply to new listings and filings made after January 1, 2004.

Compliance with proposed Rule 4350(n), requiring issuers to adopt a code of conduct,¹⁷⁵ would be required six months after approval by the Commission. Proposed Rule 4350(h), requiring audit committee approval of related party transactions, would be operative January 15, 2004. The remainder of Proposed Rules 4350(a) and 4350(b) would be effective upon approval by the Commission.

III. Summary of Comments on NYSE and Nasdaq Proposals

The Commission received a total of 90 comment letters on the NYSE and Nasdaq proposals.¹⁷⁶ Many of the commenters expressed their support for the goals of the proposals.¹⁷⁷ While some commenters praised specific

provisions of the proposals,¹⁷⁸ other commenters argued that specific provisions of the proposals were too restrictive or too lenient.¹⁷⁹ Many commenters believed that certain aspects of the proposals needed clarification.¹⁸⁰ The commenters generally addressed issues falling into one or more of the categories discussed below.

A. Independence of Majority of Board Members

General

Many commenters supported the proposals by NYSE and Nasdaq to require each listed company to have a majority of independent directors on its board,¹⁸¹ to tighten the definition of

independent director,¹⁸² and to require the board to affirmatively determine that directors are independent.¹⁸³ There were some who disagreed, however. One commenter argued, in general, that boards should not be required to have a majority of independent directors.¹⁸⁴ With respect to NYSE's proposal to tighten the definition of independent director, one commenter expressed disapproval for what it described as an "expanding list of defined relationships."¹⁸⁵ With respect to Nasdaq's proposal to tighten the definition of independent director, another commenter stated its concern that the proposed standards would lead to smaller boards or to boards composed of individuals that might not have the best or most valuable experience.¹⁸⁶

With respect to the NYSE proposal regarding the manner in which boards may disclose determinations of independence, one commenter stated its belief that permitting boards to adopt categorical standards of independence and to disclose generally that directors meet these standards would ensure that privacy is maintained concerning the specifics of private financial matters.¹⁸⁷ Another commenter requested that, with respect to the barrier to independence of individuals having specified affiliations with "organizations" having a material relationship with the company, the NYSE clarify what "organization" means.¹⁸⁸ With respect to Nasdaq's proposed definition of independence, one commenter requested that Nasdaq clarify that "employee" does not include independent contractors and employees of other goods and service providers.

Proposals Regarding Prohibited Compensation for Independent Directors

With respect to the kinds of compensation received by a director or family member that would preclude a finding of independence, one commenter described the NYSE Direct Compensation Provision as a

¹⁷⁵ See Section III.C.10. *supra* for a discussion of the Code of Conduct Proposal.

¹⁷⁶ Of the comment letters received, 63 related to the NYSE Corporate Governance Proposal, 19 related to the Nasdaq Independent Director Proposal, five related to both the NYSE Corporate Governance Proposal and the Nasdaq Independent Director Proposal, two related to the Nasdaq Code of Conduct Proposal, and one related to the Nasdaq Issuer Applicability Proposal. The public files for the NYSE and Nasdaq proposals are located at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549-0102. The public files for the rule proposals contain all comment letters on the proposals. A list of commenters on the NYSE and Nasdaq proposals (along with the citations to the letters referenced in this order), is included as Exhibit A to this order. The summary of comments contained in this section and the list of commenters contained in Exhibit A to this Order reflect comments received as of October 13, 2003.

¹⁷⁷ See Independent Community Bankers NYSE Letter, TIAA-CREF NYSE Letter, Herman E-mail, American Bankers Association NYSE Letter, Walden NYSE Letter, Railways Pension NYSE Letter, Social Investment NYSE Letter, Ethical Funds NYSE Letter, Ursuline Sisters NYSE Letter, Barclays NYSE Letter, SIO NYSE Letter, Council on Foundations NYSE Letter, Committee on Securities Regulation NYSE Letter, Intel Nasdaq Letter, Committee on Securities Regulation Nasdaq Letter, Paul Weiss Nasdaq Letter, National Venture Nasdaq Letter, and Qualcomm Nasdaq Letter.

¹⁷⁸ See American Bankers Association NYSE Letter, Walden NYSE Letter, Ursuline Sisters NYSE Letter, Barclays NYSE Letter, SIO NYSE Letter, America's Community Bankers NYSE Letter, America's Community Bankers Nasdaq Letter, Committee on Securities Regulation NYSE Letter, National Venture NYSE Letter, Investment Company Institute NYSE Letter, American Bankers Association Nasdaq Letter, Council on Foundations Nasdaq Letter, Committee on Securities Regulation Nasdaq Letter, National Venture Nasdaq Letter, Investment Company Institute Nasdaq Letter, and TI-USA Nasdaq Letter.

¹⁷⁹ See Council on Foundations NYSE Letter, Independent Community Bankers NYSE Letter, American Bankers Association NYSE Letter, Wachtell NYSE Memo, General Motors NYSE Letter, New York State Bar NYSE Letter, Wells Fargo NYSE Letter, Anadarko NYSE Letter, Winston & Strawn NYSE Letter, CNF NYSE Letter, Aetna NYSE Letter, Dow Lohnes NYSE Letter, Ameren NYSE Letter, Visteon NYSE Letter, Exxon NYSE Letter, Morrison Cohen NYSE Letter, Mirant NYSE Letter, American Society of Corporate Secretaries NYSE Letter, Computer Sciences NYSE Letter, Rockwell NYSE Letter, America's Community Bankers NYSE Letter, National Venture NYSE Letter, Peoples Energy NYSE Letter, Lorsch NYSE Letter, International Paper NYSE Letter, Agilent NYSE Letter, America's Community Bankers Nasdaq Letter, Whitney Nasdaq Letter, People's Energy Nasdaq Letter, America's Community Bankers Nasdaq Letter, Independent Community Bankers Nasdaq Letter, Kreider Nasdaq Letter, Committee on Securities Regulation Nasdaq Letter, Fulton Nasdaq Letter, and National Venture Nasdaq Letter (too restrictive), Herman E-mail, Eisenberg NYSE Letter, Mercer Delta NYSE Letter, TI-USA Nasdaq Letter, and Kolber Nasdaq E-mail (too lenient).

¹⁸⁰ See LeBoeuf NYSE Letter, New York State Bar NYSE Letter, America's Community Bankers NYSE Letter, Aetna NYSE Letter, Exxon NYSE Letter, Agilent NYSE Letter, Perkins Coie NYSE Letter, Mirant NYSE Letter, Computer Sciences NYSE Letter, Winston & Strawn NYSE Letter, General Motors NYSE Letter, Council on Foundations NYSE Letter, Committee on Federal Regulation on Securities Letter, New York City Bar NYSE Letter, Rutledge NYSE Letter, Intel Nasdaq Letter, America's Community Bankers Nasdaq Letter, Cenex Harvest Nasdaq Letter, People's Energy Nasdaq Letter, Paul Weiss Nasdaq Letter, and Committee on Securities Regulation Nasdaq Letter.

¹⁸¹ See Independent Community Bankers NYSE Letter, Hermann E-mail, American Bankers Association NYSE Letter, Walden NYSE Letter, Railways Pension NYSE Letter, Social Investment NYSE Letter, Ethical Funds NYSE Letter, Ursuline Sisters NYSE Letter, Barclays NYSE Letter, SIO

NYSE Letter, TIAA-CREF NYSE Letter, American Bankers Association Nasdaq Letter, and Independent Community Bankers Nasdaq Letter.

¹⁸² See TIAA-CREF NYSE Letter, Railways Pension NYSE Letter, Barclays NYSE Letter, and SIO NYSE Letter.

¹⁸³ See American Bankers Association NYSE Letter, TIAA-CREF NYSE Letter, and American Bankers Association Nasdaq Letter.

¹⁸⁴ See Johnson E-Mail.

¹⁸⁵ See KPMG NYSE Letter.

¹⁸⁶ See America's Community Bankers Nasdaq Letter.

¹⁸⁷ See American Bankers Association NYSE Letter.

¹⁸⁸ See New York State Bar NYSE Letter.