

statements are less complicated and therefore audit committee oversight requires less time; and (3) all funds in a fund complex typically rely on the same accounting system and are subject to the same internal controls and policies.³²⁵

K. Internal Audit Function

With respect to the NYSE proposal to require an internal audit function at all listed companies, one commenter recommended evaluating whether this requirement would be identical to the requirements of Rule 10A-3.³²⁶ If the rules were not identical, the commenter recommended delaying the imposition of additional requirements until those required by federal law have been adopted and implemented, and their efficacy evaluated after a reasonable amount of time.³²⁷ Two commenters argued that investment companies should be excluded from the internal audit requirement.³²⁸ A third commenter strongly recommended that Nasdaq implement the same requirement.³²⁹

L. NYSE Corporate Governance Guidelines

With respect to the NYSE proposal relating to corporate governance guidelines, one commenter strongly supported the proposal, particularly the concept of requiring director orientation for new directors and continuing education for all directors.³³⁰ Two other commenters also supported requiring director orientation.³³¹ Another commenter strongly supported requiring annual evaluations by the board,³³² and one commenter supported requiring board and committee assessments.³³³ Two of the commenters also recommended that evidentiary protection be provided in connection with any evaluations or assessments made by the board or its committees.³³⁴

While two other commenters supported requiring corporate governance guidelines, they argued that such guidelines should promote ethical guidelines for conducting core business, and that director orientation should

include social and environmental risk management, as well as training on corporate social responsibility.³³⁵

Another commenter stated that the reference to charitable contributions in the proposed commentary to the guideline topic relating to director compensation was too vague.³³⁶ This commenter recommended deleting the reference in its entirety or revising it to cover only the situation in which a director is permitted, as a perk of his or her position, to recommend a corporate gift to a favorite charity.³³⁷

M. Code of Business Conduct and Ethics

With respect to the NYSE proposal regarding codes of business conduct and ethics, one commenter supported the proposal and stated that it will help companies manage conflicts of interest.³³⁸ Five other commenters also supported the proposal,³³⁹ but four of these commenters argued that it should deal with a broader scope of issues including environmental and social practices.³⁴⁰ Two of these commenters promoted the Global Reporting Initiative, which provides a uniform disclosure policy and extends the reach of corporate social responsibility to economically, environmentally and socially sustainable business practices.³⁴¹ In addition, one commenter recommended that the NYSE require that CEOs endorse the codes with their signatures.³⁴²

One commenter supported the proposal to require companies to disclose waivers.³⁴³ Another commenter argued that the NYSE should require companies to disclose only a waiver of material terms of their codes because requiring disclosure of any waivers would be too burdensome and would discourage companies from adopting comprehensive codes.³⁴⁴ With respect to the Nasdaq Code of Conduct Proposal, one commenter supported the proposal, but recommended that Nasdaq require its listed companies to publish a summary of the compliance processes

in place to support the code.³⁴⁵ Another commenter also supported the proposal, but recommended that Nasdaq limit the proposed disclosure requirement to waivers of material terms of the code, because requiring disclosure of any waivers would be too burdensome and would discourage companies from adopting comprehensive codes.³⁴⁶ The commenter also stated that the proposal should address "implicit waivers," which would occur when a company fails to take action against a violation of the code. The commenter also recommended that Nasdaq permit waivers to be approved either by the board or a committee of the board to give listed companies the flexibility to place the oversight of a company's code of conduct within the jurisdiction of a particular committee if that structure would be more effective and appropriate.

Another commenter recommended that Nasdaq modify its proposal to provide that investment companies that are already subject to code of ethics and other requirements pursuant to rules under the Investment Company Act would be deemed to satisfy any new Nasdaq requirements regarding codes of conduct.³⁴⁷ The commenter argued that this modification would be consistent with Nasdaq's intentions and the NYSE proposal.

N. Noncompliance

One commenter urged the NYSE and Nasdaq to modify their proposals to permit transitional periods of noncompliance, distinct from any similar procedures for other listing standards.³⁴⁸

O. CEO Certification

Several commenters supported the NYSE proposal to require a company's CEO to certify annually that he or she is not aware of any violation of the Exchange's corporate governance rules.³⁴⁹ One of these commenters claimed that requiring CEO certification has caused many companies to engage in better due diligence about their financial statements.³⁵⁰ Other commenters disapproved of the proposal.³⁵¹ One of the commenters opposing the proposal argued that

³²⁵ See Investment Company Institute NYSE Letter.

³²⁶ See Committee on Securities Regulation NYSE Letter.

³²⁷ *Id.*

³²⁸ See Investment Company Institute NYSE Letter and Sullivan & Cromwell NYSE Letter.

³²⁹ See TI-USA Nasdaq Letter.

³³⁰ See TIAA-CREF NYSE Letter.

³³¹ See Walden NYSE Letter and Ursuline Sisters NYSE Letter.

³³² See Mercer Delta NYSE Letter.

³³³ See Boardroom Consultants NYSE Letter.

³³⁴ See Mercer Delta NYSE Letter and Boardroom Consultants NYSE Letter.

³³⁵ See Social Investment NYSE Letter and Ethical Funds NYSE Letter.

³³⁶ See Council on Foundations NYSE Letter.

³³⁷ *Id.*

³³⁸ See TIAA-CREF NYSE Letter.

³³⁹ See Barclays NYSE Letter, Walden NYSE Letter, Social Investment NYSE Letter, Ursuline Sisters NYSE Letter, and SIO NYSE Letter.

³⁴⁰ See Walden NYSE Letter, Social Investment NYSE Letter, Ursuline Sisters NYSE Letter, and SIO NYSE Letter.

³⁴¹ See Walden NYSE Letter, and SIO NYSE Letter.

³⁴² See Social Investment NYSE Letter.

³⁴³ See Railways Pension NYSE Letter.

³⁴⁴ See America's Community Bankers NYSE Letter.

³⁴⁵ See TIAA-CREF Nasdaq Letter.

³⁴⁶ See America's Community Bankers Nasdaq Letter.

³⁴⁷ See ICI 2002-139 Letter.

³⁴⁸ See Committee on Federal Regulation of Securities Letter.

³⁴⁹ See TIAA-CREF NYSE Letter, Walden NYSE Letter, Railways Pension NYSE Letter, Ursuline Sisters NYSE Letter, and Barclays NYSE Letter.

³⁵⁰ See TIAA-CREF NYSE Letter.

³⁵¹ See Computer Sciences NYSE Letter and Agilent NYSE Letter.