

disqualify a director from being considered independent following that employment;

- Revise the NYSE Direct Compensation Provision to be a bright-line test, rather than a rebuttable presumption and clarify that immediate family member compensation would need only to be considered if the family member is an executive officer of the listed company;

- Revise the NYSE Business Relationship Provision to test all payments (whether to or from the listed company) against the consolidated gross revenues of the director's company, rather than also testing them against the listed company;

- Apply the look-back period in the NYSE Business Relationship Provision only to the financial relationship between the listed company and the current employer of the director, and not require the listed company to consider former employment of the director or family member;

- Clarify in the Commentary to the NYSE Business Relationship Provision that listed companies must disclose contributions to a charity of which a director serves as an executive officer, if the contributions satisfy the proposal's threshold test;

- Recommend that listed companies should hold an executive session limited solely to independent directors at least once a year;

- Revise the NYSE Compensation Committee Provision to clarify that all independent directors may be involved in approving the CEO's compensation and that the board in general is not precluded from discussing CEO compensation;

- Restructure the audit committee provisions to clearly define the audit committee requirements applicable to listed companies pursuant to Rule 10A-3;

- Exclude closed-end funds from specified provisions of section 303A, in recognition of the additional regulation to which closed-end funds are subject under the Investment Company Act;

- Require open-end funds to comply with the requirements of section 303A(6), which implement Rule 10A-3 under the Exchange Act;

- Require business development companies to comply with all of the provisions of section 303A applicable to domestic issuers, but use the "interested person" standard under section 2(a)(19) of the Investment Company Act for purposes of determining director independence; and

- Require the audit committees of open-end and closed-end funds to establish procedures for the

confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the fund, as well as employees of the fund.

In Amendment No. 3 to its Corporate Governance Proposal, NYSE proposed to require that the audit committee charter of a closed-end or open-end fund address the responsibility of the audit committee to establish procedures for the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters, but not to require the procedures to be set forth in the charter, as would have been required by Amendment No. 2.

In Amendment No. 3 to the Nasdaq Independent Director Proposal, Nasdaq proposed revisions to various aspects of its proposal. The proposed revisions in Amendment No. 3 would:

- Narrow the definition of "Family Member;"

- Expand the relationships that would preclude a finding of independence to apply not only to directors, but also to family members of directors;

- Exclude non-discretionary charity match programs from the definition of payments that would preclude a finding of independence;

- Exclude from the Nasdaq Payments Provision loans permitted under section 13(k) of the Exchange Act;

- Expand the scope of the relationships with the company's outside auditor that preclude a finding of independence;

- Amend the Interpretive Material associated with the definition of independence to provide clarification regarding applicability of the rule, particularly with respect to directors associated with law firms, and with respect to the meaning of the term "executive officer;"

- Retain bright-line tests for determining whether a director is independent;

- Retain the same standards for both large and smaller companies;

- Add a requirement that issuers identify in their proxy those directors that the board has determined to be independent;

- Clarify that independent committees may either take action or recommend that the board take action;

- Clarify that the new requirements relating to nominations committees would not apply in cases where the right to nominate a director legally belongs to a third party, or the company

is already subject to a legally binding obligation that requires a director nomination structure inconsistent with the rule;

- Add a requirement for a nominations committee charter;

- Add a requirement that Controlled Companies be subject to the independent director executive session requirement;

- Remove a provision that would have allowed one director holding 20% or more of the company's stock to serve on the nominations committee although the director would not be independent because that director is also a company officer;

- Conform the proposals relating to audit committees to Rule 10A-3;

- Clarify that directors who have participated in the preparation of the financial statements of the company during the past three years cannot serve on the audit committee;

- Add cure periods with respect to the audit committee and majority independent board requirements that are generally consistent with the cure periods in Rule 10A-3, but extend to board vacancies as well as circumstances where a director ceases to be independent for reasons outside the director's control;

- Provide a different measure of independence for investment companies, consistent with the Investment Company Act;

- Expand NASD Rule 4350(d)(3) and its Interpretive Material to provide that audit committees of investment companies must establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company;

- Clarify that a director who qualifies as an audit committee financial expert under Item 401(h) of Regulation S-K or Item 401(e) of Regulation S-B is presumed to qualify as a financially sophisticated audit committee member under NASD Rule 4350(d)(2)(A); and
- Add a requirement that issuers must notify Nasdaq of any material non-compliance with NASD Rule 4350.

In amendments to the Nasdaq Issuer Applicability Proposal, Nasdaq proposed revisions in a number of areas, including in response to public comments or suggestions from Commission staff. The proposed revisions would:

- Clarify the applicability of the rules to foreign issuers;