

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD-99-52, and should be submitted by November 3, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-26621 Filed 10-12-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41982; File No. SR-NASD-99-48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Amending Nasdaq's Audit Committee Requirements

October 6, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 20, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq has filed with the Commission a proposed rule change amending its definition of independence and its audit committee requirements. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Rule 4200. DEFINITIONS

(a) For purposes of the Rule 4000 Series, unless the context requires otherwise:

(1)-(14) No change

(15) "Independent director" means a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. *The following persons shall not be considered independent:*

(a) *a director who is employed by the corporation or any of its affiliates for the current year or any of the past three years;*

(b) *a director who accepts any compensation from the corporation or any of its affiliates in excess of \$60,000 during the previous fiscal year, other than compensation for board service, benefits under a tax-qualified retirement plan, or non-discretionary compensation;*

(c) *a director who is a member of the immediate family of an individual who is, or has been in any of the past three years, employed by the corporation or any of its affiliates as an executive officer. Immediate family includes a person's spouse, parents, children, siblings, mother-in-law, father-in-law, brother-in-law, sister-in-law, and anyone who resides in such person's home;*

(d) *a director who is a partner in, or a controlling shareholder or an executive officer of, any for-profit business organization to which the corporation made, or from which the corporation received, payments (other than those arising solely from investments in the corporation's securities) that exceed 5% of the corporation's or business organization's consolidated gross revenues for that year, or \$200,000, whichever is more, in any of the past three years;*

(e) *a director who is employed as an executive of another entity where any of the company's executives serve on that entity's compensation committee.*

(15)-(36) renumbered as (16)-(37)

(b) No change

Rule 4310. Qualification Requirements for Domestic and Canadian Securities

To qualify for inclusion in Nasdaq, a security of a domestic or Canadian issuer shall satisfy all applicable requirements contained in paragraphs (a) or (b), and (c) hereof.

(a)-(b) No change

(c) In addition to the requirements contained in paragraph (a) or (b) above,

and unless otherwise indicated, a security shall satisfy the following criteria for inclusion in Nasdaq:

(1)-(24) No change

(25) Corporate Governance Requirements

* * * * *

(A) No change

(B) Independent Directors

Each issuer shall maintain a [minimum of two] *sufficient number of independent directors on its board of directors to satisfy the audit committee requirement set forth in Rule 4310(c)(26)(B).*

[(C) Audit Committee

Each issuer shall establish and maintain an Audit Committee, a majority of the members of which shall be independent directors.]

(D)-(H) renumbered as (C)-(G)

(26) Audit Committee

(A) Audit Committee Charter

Each Issuer must certify that it has adopted a formal written audit committee charter and that the Audit Committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify the following:

(i) the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;

(ii) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to ensure the independence of the outside auditor; and

(iii) the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement).

(B) Audit Committee Composition

(i) Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

members, comprised solely of independent directors, each of whom is able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement or will become able to do so within a reasonable period of time after his or her appointment to the audit committee. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee that has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(ii) Notwithstanding paragraph (i), one director who is not independent as defined in Rule 4200, and is not a current employee or an immediate family member of such employee, may be appointed to the audit 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 corporation and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(iii) Exception for Small Business Filers—Paragraphs (B)(i) and (B)(ii) do not apply to issuers that file reports under SEC Regulation S-B. Such issuers must establish and maintain an Audit Committee of at least two members, a majority of the members of which shall be independent directors.

(26)–(28) renumbered as (27)–(29)

(d) No change

Rule 4320. Qualification Requirements for Non-Canadian Foreign Securities and American Depositary Receipts

To qualify for inclusion in Nasdaq, a security of a non-Canadian foreign issuer, and American Depositary Receipt (ADR) or similar security issued in respect of a security of a foreign issuer shall satisfy the requirements of paragraphs (a), (b) or (c), and (d) and (e) of this Rule.

(a)–(d) No change

(e) In addition to the requirements contained in paragraphs (a), (b) or (c), and (d), the security shall satisfy the following criteria for inclusion in Nasdaq:

(1)–(20) No change

(21) Corporate Governance Requirements—No provisions of this subparagraph or of subparagraph [(23)] (24) shall be construed to require any foreign issuer to do any act that is contrary to a law, rule or regulation of any public authority exercising jurisdiction over such issuer or that is contrary to generally accepted business practices in the issuer's country of domicile. Nasdaq shall have the ability to provide exemptions from the applicability of these provisions as may be necessary or appropriate to carry out this intent.

Nasdaq shall review the issuer's past corporate governance activities. This review may include activities taking place while the issuer is listed on Nasdaq or an exchange that imposes corporate governance requirements, as well as activities taking place after the issuer is no longer listed on Nasdaq or an exchange that imposes corporate governance requirements. Based on such review, Nasdaq may take any appropriate action, including placing of restrictions on or additional requirements for listing, or the denial of listing of a security if Nasdaq determines that there have been violations or evasions of such corporate governance standards. Determinations under this subparagraph shall be made on a case-by-case basis as necessary to protect investors and the public interest.

(A) No change

(B) Independent Directors

Each issuer shall maintain a [minimum of two] sufficient number of independent directors on its board of directors to satisfy the audit committee requirement set forth in Rule 4320(c)(22)(B).

[(C) Audit Committee

Each issuer shall establish and maintain an Audit Committee, a majority of the members of which shall be independent directors.]

(D)–(H) renumbered as (C)–(G)

(22) Audit Committee

(A) Audit Committee Charter

Each Issuer must certify that it has adopted a formal written audit committee charter and the Audit Committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify the following:

(i) the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;

(ii) the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all

relationships between the auditor and the company, consistent with Independence Standards Board Standard 1, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to ensure the independence of the outside auditor; and

(iii) the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement).

(B) Audit Committee Composition

(i) Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, comprised solely of independent directors, each of whom is able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement or will become able to do so within a reasonable period of time after his or her appointment to the audit committee. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee that has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

(ii) Notwithstanding paragraph (i), one director who is not independent as defined in Rule 4200, and is not a current employee or an immediate family member of such employee, may be appointed to the audit 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 corporation and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.

(iii) *Exception for Small Business Filers—Paragraphs (B)(i) and (B)(ii) do not apply to issuers that file reports under SEC Regulation S-B. Such issuers must establish and maintain an Audit Committee of at least two members, a majority of the members of which shall be independent directors.*

(22)–(24) renumbered as (23)–(25)

(f) No change

Rule 4460. Non-Quantitative Designation Criteria for Issuers Excepting Limited Partnerships

(a)–(b) No change

(c) Independent Directors

Each NNM issuer shall maintain a [minimum of two] *sufficient number of independent directors on its board of directors to satisfy the audit committee requirement set forth in Rule 4460(d)(2).*

(d) Audit Committee

[Each NNM issuer shall establish and maintain an Audit Committee, a majority of the members of which shall be independent directors.]

(1) Audit Committee Charter

Each Issuer must certify that it has adopted a formal written audit committee charter and that the Audit Committee has reviewed and reassessed the adequacy of the formal written charter on an annual basis. The charter must specify the following:

(A) *the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements;*

(B) *the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with independence Standards Board Standard 1, and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to ensure the independence of the outside auditor; and*

(C) *the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement).*

(2) Audit Committee Composition

(A) *Each issuer must have, and certify that it has and will continue to have, an audit committee of at least three members, comprised solely of independent directors, each of whom is able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement or will become able to do so within a reasonable period of time after his or her appointment to the audit committee. Additionally, each issuer must certify that it has, and will continue to have, at least one member of the audit committee that has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.*

(B) *Notwithstanding paragraph (i), one director who is not independent as defined in Rule 4200, and is not a current employee or an immediate family member of such employee, may be appointed to the audit 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 corporation and its shareholders, and the board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination.*

(C) *Exception for Small Business Filers—Paragraphs (2)(A) and (2)(B) do not apply to issuers that file reports under SEC Regulation S-B. Such issuers must establish and maintain an Audit Committee of at least two members, a majority of the members of which shall be independent directors.*

(e)–(n) No change

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

In its filing with the Commission, Nasdaq 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. Nasdaq has 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

In February 1999, the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees ("Blue Ribbon Committee") issue a report containing ten recommendations aimed at strengthening the independence of the audit committee; making the audit committee more effective; and addressing mechanisms for accountability among the audit committee, the outside auditors, and management.³ In response to the Blue Ribbon Committee's six recommendations regarding listing standards, Nasdaq proposes these rule changes relating to its audit committee requirements. These changes fall into three general areas: (1) The definition of independence; (2) the structure and membership of the audit committee; and (3) the audit committee charter.

With regard to the definition of independence, Nasdaq proposes to provide greater specificity for all directors, not just for those serving on the audit committee. Specifically, consistent with the recommendations of the Blue Ribbon Committee, Nasdaq proposes to augment its current definition of "independent director" with five relationships that would disqualify a director from being considered independent because these relationships could impair a director's independent judgment as a result of financial, familial, or other material ties to management or the corporation. The first of these relationships is a director who is employed by the corporation or any of its affiliates for the current year or any of the past three years. The second is a director who accepts any compensation from the corporation or any of its affiliates in excess of \$60,000 during the previous fiscal year, other than compensation for board service, benefits under a tax-qualified retirement plan, or non-discretionary compensation. The third relationship is a director who is a member of the immediate family of an individual who is, or has been in any of the past three years, employed by the corporation or any of its affiliates as an executive officer. The fourth relationship is a director who is a partner in, or a controlling shareholder or an executive

³ *Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (1999)*. A copy of this Report can be found on-line at www.nasdaqnews.com.

officer of, any for-profit business organization to which the corporation made, or from which the corporation received, payments (other than those arising solely from investments in the corporation's securities) that exceed 5 percent of the corporation's or business organization's consolidated gross revenues for that year, or \$200,000, whichever is more, in any of the past three years. The final relationship is a director who is employed as an executive of another entity where any of the company's executives serve on that entity's compensation committee.

Although the above-enumerated relationships are similar to those recommended by the Blue Ribbon Committee, Nasdaq looked to existing SEC rules and other pronouncements to provide additional specificity. In this regard, the five-year ban recommended by the Blue Ribbon Committee was reduced to three years, which Nasdaq views as a more reasonable period while still greater than the SEC's rule 144⁴ two year time frame. Furthermore, although the Blue Ribbon Committee recommended that a director who received any compensation from the corporation (other than for board service or under a tax-qualified retirement plan) be disqualified from being considered independent, Nasdaq believes that a compensation threshold of \$60,000 is appropriate as it corresponds to the *de minimis* threshold for disclosure of relationships that may affect the independent judgment of directors set forth in SEC Regulation S-K, Item 404.⁵ In addition, Nasdaq believes that the receipt of non-discretionary compensation should not automatically disqualify a director from being considered independent. Furthermore, the proposed rule changes provides further clarification of the fourth relationship by specifying that payments resulting solely from investments in the corporation's securities will not prevent a director from being considered independent and by looking to the American Law Institute's measurement of "significant" when determining what payments to or from a company could impair a director's independent judgment.⁶ Finally, Nasdaq believes that the heightened independence standard should apply to all issuers due to the importance of this issue.

With regard to the structure and membership qualifications of the audit committee, Nasdaq proposes to change

the required composition of the audit committee from at least two to at least three members. Furthermore, the audit committee must be comprised solely of independent directors rather than a majority of independent directors. Nasdaq is conscious of the fact that in exceptional circumstances, issuers may appropriately conclude that it would be in the best interests of a corporation for a non-independent director to serve on the audit committee. In such exceptional and limited circumstances, a non-independent director can serve on the audit committee, provided that the board determines that it is required by the best interests of the corporation and its shareholders, and the board discloses the reasons for the determination in the next annual proxy statement. Due to the nature of this exception, however, a corporation could have no more than one non-independent director serving on its audit committee. Also, current employees or officers, or their immediate family members may not serve on the audit committee.

As a result of the audit committee's responsibility with respect to a corporation's accounting and financial reporting, Nasdaq believes that audit committee members should have a basic understanding of financial statements. As such, the proposed rule change requires that each member of the audit committee be able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement or become able to do so within a reasonable period of time after his or her appointment to the audit committee. Furthermore, in order to further enhance the effectiveness of the audit committee, at least one member of the audit committee must have past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer, or other senior officer with financial oversight responsibilities.

Nasdaq is sensitive to the potential burden that the proposed changes to the audit committee composition requirements may place on small companies. Therefore, Nasdaq proposes to exempt those corporations that file under SEC Regulation S-B from these proposed changes. Corporations that are small business filers will be held to the existing Nasdaq requirements with respect to audit committee composition. That is, they must maintain an audit committee of at least two members, a

majority of whom are independent directors.

With regard to the audit committee charter, Nasdaq believes that a written charter would help the audit committee as well as management and the corporation's auditors recognize the function of the audit committee and the relationship among these parties. As much, the proposed rule change would require each audit committee to adopt a formal written charter. This charter must specify the scope of the audit committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements. In addition, the charter must specify the audit committee's responsibility for ensuring its receipt from the outside auditors of a formal written statement delineating all relationships between the auditor and the company, consistent with Independence Standards Board Standard 1,⁷ and the audit committee's responsibility for actively engaging in a dialogue with the auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take appropriate action to ensure the independence of the outside auditor. Also, the charter must specify the outside auditor's ultimate accountability to the board of directors and the audit committee, as representatives of shareholders, and these shareholder representatives' ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement). Issuers would be required to review their charter on an annual basis.

Nasdaq proposes to allow directors serving on the audit committee at the time the proposed rule change is approved by the Commission to continue serving on the audit committee until they are re-elected or replaced. Nasdaq also believes that the new rules should be made effective 18 months after the proposed rule change is approved by the Commission to provide issuers adequate time to recruit the requisite members.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the

⁴ 17 CFR 230.144.

⁵ 17 CFR 229.404.

⁶ American Law Institute, Principles of Corporate Governance § 1.34 (1994).

⁷ Independence Standard No. 1, Independence Discussions with Audit Committees (January 1999). This Standard can be found on-line at www.cpaindependence.org.

Act⁸ which requires, among other things, that the Association's rules to be designed to prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest. As noted above, Nasdaq's proposed rule change is aimed at improving the effectiveness of audit committees of Nasdaq Issuers, which is consistent with these goals.

Accordingly, this proposal is properly within the discretion of the Association.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate, up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR-NASD-99-48 and should be submitted by November 3, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-26622 Filed 10-12-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41980; File No. SR-NYSE-99-39]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending Audit Committee Requirements of Listed Companies

October 6, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rules 19b-4 thereunder,² notice is hereby given that on September 22, 1999, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Paragraph 303 of its *Listed Company Manual* (the "Manual"). The rule change amends the Exchange's policy applicable to audit committee requirements of listed companies. The text of the proposed rule change is as follows.

NYSE Listed Company Manual

* * * * *

⁹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Section 3

Corporate Responsibility

[Section 303.00 is being replaced in its entirety with the following (except the parenthetical reference to outside directors)]

303.00 Corporate Governance Standards

In addition to the numerical listing standards, the Exchange has adopted certain corporate governance listing standards. These standards apply to all companies listing common stock on the Exchange. However, the Exchange does not apply a particular standard to a non-U.S. company if the company provides the Exchange with a written certification from independent counsel of the company's country of domicile stating that the company's corporate governance practices comply with home country law and the rules of the principal securities market for the company's stock outside the United States.

303.01 Audit Committee

(A) *Audit Committee Policy.* Each company must have a qualified audit committee.

(B) *Requirements for a Qualified Audit Committee.*

(1) Formal Charter. Each audit committee must adopt a formal written charter that is approved by the Board of Directors. The audit committee must review and reassess the adequacy of the audit committee charter on an annual basis. The charter must specify the following:

(a) The scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes and membership requirements;

(b) That the outside auditor for the company is ultimately accountable to the Board of Directors and audit committee of the company, that the audit committee and Board of Directors have the ultimate authority and responsibility to select, evaluate and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement); and

(c) That the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the auditor and the company and that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor and for recommending that the Board of Directors take appropriate action to ensure the independence of the outside auditor.

(2) *Composition/Expertise Requirement of Audit Committee Members.*

(a) Each audit committee shall consist of at least three directors, all of whom have no relationship to the company that may interfere with the exercise of their independence from management and the company ("Independent");

(b) Each member of the audit committee shall be financially literate, as such qualification is interpreted by the company's Board of Directors in its business judgment, or must become financially literate within a

⁸ 15 U.S.C. 78o-3(b)(6).