CLIENT ALERT

ROPES & GRAY

Securities & Public Companies

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SEC Approves NYSE Changes to Corporate Governance Rules

On November 3, 2004, the SEC approved clarifying and substantive changes proposed by the New York Stock Exchange to its corporate governance rules. We previously discussed the extensive changes to these rules adopted by the SEC on November 4, 2003 in a separate SEC Alert which you can access by clicking on the following link: Summary of NYSE and Nasdaq Corporate Governance Rules. In the table below, we summarize the principal clarifications, changes and additions. Where applicable, the pertinent change to the rule is italicized.

Original Rule	Clarification/Change/Addition
Independent Directors	
Listed companies must disclose the determinations of its board of directors that a director has been deemed to be independent.	*Clarification:* Listed companies are required to identify which of their directors have been deemed independent.
Employment as an interim Chairman or CEO does not disqualify a director from being considered independent following that employment.	*Change:* Employment as an interim executive officer (and not only as an interim Chairman or CEO) does not disqualify a director from being considered independent.
Compensation received by a director for former service as an interim Chairman or CEO shall notdisqualify a director from being considered independent.	*Change:* Compensation received by a director for former service as an interim executive officer (and not only as an interim Chairman or CEO) does not disqualify a director from being considered independent.
A director who "receives, or whose immediate family member receives, more than $100,000 in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service), is not independent until three years after he or she ceases to receive more than $100,000 per year in such compensation."	*Change:* A director is not independent if the director "has received or has an immediate family member who has received, during any twelve-month period within the last three years, more than $100,000 in direct compensation from the listed company, other than director and committee fees and pension of other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service)."

Original Rule	Clarification/Change/Addition
A director who is affiliated with or employed by, or whose immediate family member is affiliated with or employed in a professional capacity by, a present or former internal or external auditor of the company is not 'independent' until three years after the end of the affiliation or the employment or auditing relationship.	*Change:* A director is not independent if: "(A) The director or an immediate family member is a current partner of a firm that is the company's internal or external auditor; (B) the director is a current employee of such a firm; (C) the director has an immediate family member who is a current employee of such a firm and who participates in the firm's audit, assurance or tax compliance (but not tax planning) practice; or (D) the director or an immediate family member was within the last three years (but is no longer) a partner or employee of such a firm and personally worked on the listed company's audit within that time." *Date of Effectiveness:* Listed companies have until their first annual meeting after June 30, 2005 to replace a director who was independent under the NYSE's previous Director-Auditor Relationship Test, but is not under the revised rule.
Non-Management Directors	
Non-management directors of each company must meet at regularly scheduled executive sessions without management.	*Clarification:* A non-management director must preside over each executive session of the non-management directors, although the same director is not required to preside at all executive sessions of the non-management directors.
Audit Committees	
Audit committees have certain duties and responsibilities. See NYSE Listed Company Manual, Section 303A.07(c).	*Addition:* Audit committee responsibilities include a review of the company's financial statements and specifically the Management's Discussion and Analysis disclosures.
Compensation Committees	
Compensation committee responsibilities include making recommendations to the board with respect to non-CEO compensation, incentive-compensation plans and equity-based plans.	*Clarification:* The non-CEO compensation for which a compensation committee must make recommendations to its board is that of the executive officers.

Contact Information

If you have any questions or would like to learn more about these rules, please contact the lawyer who normally represents you.