



NASDAQ Corporate Governance Summary of Rules Changes

November 2003

The following provides a summary of NASDAQ's recently approved corporate governance reforms. Adopting significant changes that are both clear and objective to companies and investors is part of NASDAQ's continuous commitment to restoring confidence in the markets through enhanced disclosure and transparency.

*NASDAQ is committed to helping board members understand their governance responsibilities. We are partnering with experts to provide opportunities for directors to receive relevant continuing education. One such initiative is an alliance with the National Association of Corporate Directors (NACD) to provide corporate governance educational services to NASDAQ listed companies through the **NASDAQ Corporate Services Network** at NASDAQ.net. In addition, NASDAQ sponsors the Board Governance Series of Webcasts, produced in conjunction with Corporate Board Member magazine, which is available free of charge at NASDAQnews.com.*

Complete NASDAQ rules are available on NASDAQ.com under "Legal and Compliance" in the "Inside NASDAQ" section.

Effective Dates for Rules Changes – Approved November 4, 2003

The new rules will generally take effect with a company's first annual meeting occurring after January 15, 2004, but not later than October 31, 2004. Rules relating to codes of conduct will be effective May 4, 2004. The rule requiring audit committee approval of related party transactions will be effective January 15, 2004.

Note: Companies having staggered boards would have an additional year for compliance, except with respect to the audit committee requirements. Foreign issuers and SB filers would have until July 31, 2005 to achieve compliance.

Increased Board and Audit Committee Independence

- A majority of independent directors are required on the board.
- Regularly convened (at least twice per year) executive sessions of the independent directors must be held.
- A company's audit committee or a comparable body of the board of directors must review and approve all related-party transactions.
- A director is not considered independent if during the last three years he or she has received any payments (including political contributions) in excess of \$60,000 other than for board service. This prohibition also covers the receipt of payments by a non-employee who is an immediate family member of the director.
- An audit committee member may not receive any compensation except for board or committee service.

- A director is not considered independent if he or she has been employed by the company (or a parent or subsidiary) within the past three years, or if an immediate family member is employed as an executive officer of the company (or a parent company or subsidiary), or has been so employed within the past three years.
- Rules now include not-for-profit entities. This means a director is prohibited from being considered independent if the company makes payments to any other entity, including a not-for-profit entity, where the director is an executive officer and the payments exceed the greater of \$200,000 or five percent of the recipient's gross revenues. The rule also expands to cover situations where an immediate family member of the director is an executive officer of the entity receiving payments.
- Current partners of the company's outside auditor and their immediate family members cannot be considered independent for three years. Additionally, any former partner or employee of a company's outside auditor who worked on a company's audit will not be considered independent for three years.
- A director is not considered independent if, during the past three years, the director or an immediate family member was employed as an executive of another company where any executives of the listed company serve on the compensation committee of the company of which the director is an executive.
- In the case of investment companies, a director is not considered independent if he or she is an "interested person" under the Investment Company Act.

Strengthened the Role of Independent Directors

- Independent directors must approve director nominations, either by independent nominating committee or by a majority of the independent directors. *See full rules at NASDAQ.com for limited exceptions to this requirement.*
- A charter is required describing the role of the nominating committee, or alternatively a board resolution describing the role of the independent directors, in the nominations process.
- Independent director approval of CEO compensation is required, either by an independent compensation committee or by a majority of the independent directors meeting in executive session.
- Other executive officer compensation must also have independent approval, either by an independent compensation committee or by a majority of the independent directors in a meeting at which the CEO may be present.

NOTE: - "Controlled" companies are exempt from the requirements for a majority independent board and independent compensation and nominating committees. A controlled company is a company of which more than 50% of the voting power is held by an individual, group or another company.

Expanded Audit Committee Authority

- Audit committees will have the sole authority to appoint, determine funding for, and oversee the outside auditors.

- Audit committees must approve, in advance, the provision by the auditor of all permissible non-audit services.
- Audit committees are required to have authority to engage and determine funding for independent counsel and other advisors.
- Audit committees must establish procedures for the receipt, retention, and confidential and anonymous treatment of complaints received by the company regarding accounting, internal accounting controls or auditing.
- All audit committee members must be able to read and understand financial statements at the time of their appointment.
- Exceptions to the audit committee requirements are eliminated for Small Business Filers.

NOTE: Companies will still be required to have at least one member on 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. NASDAQ has withdrawn a previous proposal to require one member of the audit committee to meet the SEC's definition of a "financial expert," although a person meeting that definition would also satisfy NASDAQ's rule.

Non-U.S. Companies Disclosure Requirements

- Effective July 31, 2005, only foreign private issuers are eligible for exemptions under the new rules. Beginning January 1, 2004, all foreign issuers must disclose any exemptions to NASDAQ's corporate governance requirements at the time of their first U.S. listing and annually thereafter.

Codes of Conduct Requirements

- Issuers must adopt a code of conduct for all directors and employees and make it publicly available.
- Waivers to the code of conduct for executive officers and directors can only be granted by the issuer's board and must be disclosed.

NASDAQ companies and board members are encouraged to review complete rules at NASDAQ.com, under "Legal and Compliance" in the "Inside NASDAQ" section, for more detail and any exceptions to NASDAQ rules and listing standards.