



## Corporate Governance Guidelines

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### A. Purpose

The Board of Directors (the “Board”) of the Company has adopted the following Corporate Governance Guidelines (the “Guidelines”) to assist the Board in the exercise of its duties and responsibilities and to serve the best interests of the Company and its shareholders. The Guidelines should be applied in a manner consistent with all applicable laws and stock exchange rules and the Company’s charter and bylaws, each as amended and in effect from time to time. The Guidelines are intended to serve as a flexible framework for the conduct of the Board’s business and not as a set of legally binding obligations. The Board may modify or make exceptions to the Guidelines from time to time in its discretion and consistent with its duties and responsibilities to the Company and its shareholders.

### B. Director Responsibilities

1. Oversee Management of the Company. The principal responsibility of the directors is to oversee the management of the Company and, in doing so, serve the best interests of the Company and its shareholders. This responsibility includes:
  - reviewing and approving fundamental operating, financial and other corporate plans, strategies and objectives;
  - evaluating the performance of the Company and its senior executives and taking appropriate action, including removal, when warranted;
  - evaluating the Company’s compensation programs on a regular basis and determining the compensation of its senior executives;
  - reviewing and approving senior executive succession plans;
  - evaluating whether corporate resources are used only for appropriate business purposes;
  - establishing a corporate environment that promotes timely and effective disclosure (including robust and appropriate controls, procedures and incentives), fiscal accountability, high ethical standards and compliance with all applicable laws and regulations;
  - reviewing the Company’s policies and practices with respect to risk assessment and risk management;
  - reviewing and approving material transactions and commitments not entered into in the ordinary course of business;

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- developing a corporate governance structure that allows and encourages the Board to fulfill its responsibilities;
  - providing advice and assistance to the Company's senior executives; and
  - evaluating the overall effectiveness of the Board and its committees.
2. Exercise Business Judgment. In discharging their fiduciary duties, directors are expected to exercise their business judgment to act in what they reasonably believe to be the best interests of the Company and its shareholders.
3. Understand the Company and its Business. Directors have an obligation to become and remain informed about the Company and its business, including the following:
- the principal operational and financial objectives, strategies and plans of the Company;
  - the results of operations and financial condition of the Company, its significant subsidiaries and business segments;
  - the relative standing of the business segments within the Company and as compared to competitors;
  - the factors that determine the Company's success; and
  - the risks and problems that affect the Company's business and prospects.
4. Establish Effective Systems. Directors are responsible for determining that effective systems are in place for the periodic and timely reporting to the Board on important matters concerning the Company, including the following:
- current business and financial performance, the degree of achievement of approved objectives and the need to address forward-planning issues;
  - future business prospects and forecasts, including actions, facilities, personnel and financial resources required to achieve forecasted results;
  - financial statements, with appropriate segment or divisional breakdowns;
  - compliance programs to assure the Company's compliance with law and corporate policies;
  - material litigation and governmental and regulatory matters; and
  - monitoring and, where appropriate, responding to communications from shareholders.
- Directors should also periodically review the integrity of the Company's internal control and management information systems.
5. Board, Committee and Shareholder Meetings. Directors are responsible for attending Board meetings, meetings of committees on which they serve and the annual meeting of shareholders, and devoting the time needed, and meeting as frequently as necessary, to discharge their responsibilities properly.

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6. Reliance on Management and Advisors; Indemnification. The directors are entitled to rely on the Company's senior executives and its outside advisors, auditors and legal counsel, except to the extent that such person's integrity, honesty or competence is in doubt. The directors are also entitled to Company-provided indemnification, statutory exculpation and directors' and officers' liability insurance.

### C. Director Qualification Standards

1. Independence. Except as may otherwise be permitted by NASDAQ rules, a majority of the members of the Board shall be independent directors. To be considered independent: (1) a director must be independent as determined under Section 5605(a)(2) Attachment B of the NASDAQ Listing Rules and (2) in the Board's judgment, the director must not have a material relationship with the Company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the Company).

The Board has established guidelines to assist it in determining whether a director has a material relationship with the Company. The Board has adopted the categorical standard that a director will not fail to be deemed independent solely as a result of lending relationships, deposit relationships, or other banking relationships between the Company, on one hand, and the director or an entity with which the director is affiliated, on the other, provided that

- a. such relationships are in the ordinary course of business of the Company and are on substantially the same terms as those prevailing at the time for comparable transactions with non-affiliated persons; and
- b. with respect to extensions of credit by the Company or one of its subsidiaries to the director or such entity, such extensions of credit are made in compliance with applicable law, including Regulation O of the Board of Governors of the Federal Reserve and Section 13(k) of the Securities Exchange Act of 1934, no event of default has occurred with respect to such credit, and such credit is otherwise in good standing as determined from time to time by the Board in its sole discretion.

A director who is indebted to the Company or one of its subsidiaries shall terminate his directorship in the event that such indebtedness is not maintained in good standing as determined by the Board.

In addition, as a categorical standard, a director will not fail to be deemed independent solely as a result of his or her affiliation with a vendor of goods or services to the Company if

- a. the economic benefit derived by such director from the consideration paid to such vendor is not material to the director and
- b. the purchase is approved by the Board in accordance with the following paragraph. A director's ownership of even a significant amount of stock of

the Company shall not, by itself, impair such director's independence or constitute material ownership.

In general, directors are not to be vendors of goods or services to the Company or materially affiliated with any such vendor. The role of a director is distinct from that of a consultant, advisor, or other provider of goods or services to the Company, and the Board has determined that the two roles should not be commingled. Notwithstanding the foregoing, the Board may approve the purchase of goods or services from a director or his or her affiliated entity if

- a. such purchase is deemed to be in the best interest of the Company,
- b. the economic benefit to be derived by the director from such purchase is not larger than his or her compensation for services as a director, and
- c. such purchase is approved by the Board without the presence of the involved director.

For relationships not covered by the guidelines set forth above, the determination of whether a material relationship exists shall be made by the other members of the Board who are independent as defined above.

2. Size of the Board. The Board will periodically consider whether the size of the Board is appropriate given the Company's present circumstances and any changes in the Company's business.
3. Other Directorships. A director shall limit the number of other public company boards on which he or she serves so that he or she is able to devote adequate time to his or her duties to the Company, including preparing for and attending meetings. Directors should advise the Chairman of the Board and the Chairman of the Corporate Governance and Nominating Committee in advance of accepting an invitation to serve on another public company board. In no case shall a director serve on the Board of more than three other publicly traded companies. Service on boards and/or committees of other organizations shall comply with the Company's conflict of interest policies.
4. Tenure. The Board does not believe it should establish term limits. Term limits could result in the loss of directors who have been able to develop, over a period of time, increasing insight into the Company and its operations and an institutional memory that benefit the entire membership of the Board as well as management. As an alternative to term limits, the Corporate Governance and Nominating Committee shall review each director's continuation on the Board at least once every three years. Directors hold office for staggered three-year terms or until their earlier resignation or removal. This will allow each director the opportunity to conveniently confirm his or her desire to continue as a member of the Board and allow the Company to conveniently replace directors who are no longer interested or effective.

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5. Board Leadership Structure. The Corporate Governance and Nominating Committee shall periodically assess the Board's leadership structure, including whether the offices of Chairman of the Board and Chief Executive Officer should be separate, whether the Company should have an independent "Lead Director" in the event that the Chairman of the Board is not an independent director, and why the Board's leadership structure is appropriate given the specific characteristics or circumstances of the Company. In the event that the Chairman of the Board is not an independent director, the Corporate Governance and Nominating Committee may designate an independent director to serve as "Lead Director", who shall be approved by a majority of the independent directors.

Each director is expected

- a. to serve on, and participate diligently in the work of, at least one committee if independent and
- b. to attend the entirety of at least 75% of all Board and committee meetings each year

The Lead Director, if one is appointed, shall:

- chair any meeting of the non-management or independent directors in executive session;
  - meet with any director who is not adequately performing his or her duties as a member of the Board or any committee;
  - facilitate communications between other members of the Board and the Chairman of the Board and/or the Chief Executive Officer; however, each director is free to communicate directly with the Chairman of the Board and with the Chief Executive Officer;
  - monitor, with the assistance of the Company's General Counsel or outside legal counsel, communications from shareholders and other interested parties and provide copies or summaries to the other directors as he or she considers appropriate;
  - work with the Chairman of the Board in the preparation of the agenda for each Board meeting and in determining the need for special meetings of the Board; and
  - otherwise consult with the Chairman of the Board, the Chief Executive Officer and/or the Chairman of the Corporate Governance & Nominating Committee on matters relating to corporate governance and Board performance.
6. Selection of New Director Candidates. Except where the Company is legally required by contract, by law or otherwise to provide third parties with the ability to nominate directors, the Corporate Governance and Nominating Committee shall be responsible for (i) identifying individuals qualified to become Board members, consistent with criteria approved by the Board, and (ii) recommending to the Board the persons to be nominated for election as directors at any meeting of shareholders and the persons to be elected by the Board to fill any vacancies on the Board. Director nominees shall be considered for recommendation by the Corporate Governance and Nominating Committee in accordance

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with these Guidelines, the policies and principles in its charter and the criteria set forth in Attachment A to these Guidelines. It is expected that the Corporate Governance and Nominating Committee will have direct input from the Chairman of the Board, the Chief Executive Officer and, if one is appointed, the Lead Director. The Corporate Governance and Nominating Committee shall consider candidates proposed by shareholders.

7. Extending the Invitation to a New Director Candidate to Join the Board. The invitation to join the Board should be extended either by the Chairman of the Board, on behalf of the Board, or the Chairman of the Corporate Governance and Nominating Committee, on behalf of such Committee. Unauthorized approaches to prospective directors can be premature, embarrassing and harmful.
8. Change of Responsibility of Director. Any director who retires from his or her principal current employment, or who materially changes his or her current position, should offer to tender his or her resignation to the Board. The Corporate Governance and Nominating Committee shall then recommend to the Board whether the Board should accept the offer to resign in light of his or her new status.
9. Former Chief Executive Officer's Board Membership. The Board believes that the continuation of a former Chief Executive Officer of the Company on the Board is a matter to be decided in each individual instance by the Board, upon recommendation of the Corporate Governance and Nominating Committee. Accordingly, when the Chief Executive Officer ceases to serve in that position, he or she will be expected to resign from the Board if so requested by the Board, upon recommendation of the Corporate Governance and Nominating Committee.
10. Director Emeritus. The Board, in its sole discretion, may appoint a director to the status of Director Emeritus upon his or her voluntary departure from the Board. The status of Director Emeritus shall be solely honorary, and shall not confer or entail any of the legal rights or responsibilities of a director.
11. Failure to Receive Required Vote. Any director who receives more "withhold" votes than votes "for" his or her election in an uncontested election shall promptly offer to tender his or her resignation. The Corporate Governance and Nominating Committee shall then recommend to the Board whether the Board should accept the offer to resign.

#### D. Board Meetings

1. Selection of Agenda Items. The Chairman of the Board shall approve the agenda for each Board meeting. Each Board member is free to suggest the inclusion of agenda items and is free to raise at any Board meeting subjects that are not on the agenda for that meeting.
2. Frequency and Length of Meetings. The Chairman of the Board, in consultation with the members of the Board, shall determine the frequency and length of the Board meetings.

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Special meetings may be called from time to time as determined by the needs of the business.

3. Advance Distribution of Materials. Information and data that are important to the Board's understanding of the business to be conducted at a Board or committee meeting should generally be distributed in writing to the directors before the meeting, and directors should review these materials in advance of the meeting. The Board acknowledges that certain items to be discussed at a Board or committee meeting may be of an extremely confidential or time-sensitive nature and that the distribution of materials on these matters prior to meetings may not be appropriate or practicable. Presentations made at Board meetings should do more than summarize previously distributed Board meeting materials.
4. Executive Sessions. The "non-management" directors, as defined by NASDAQ rules, shall meet in executive session at least twice a year to discuss, among other matters, the performance of the Chief Executive Officer. The non-management directors will meet in executive session at other times at the request of any non-management director. Absent unusual circumstances, these sessions shall be held in conjunction with regular Board meetings. The director who presides at these meetings shall be the Lead Director if there is one, and if not, shall be chosen by the non-management directors, and his or her name shall be disclosed in accordance with applicable NASDAQ rules.

The Board or its independent directors in an executive session must review and approve all related-party transactions, as defined by laws or rules promulgated under the Securities Exchange Act of 1934 or by applicable stock exchanges.

5. Attendance of Non-Directors at Board Meetings. The Board encourages the senior executives of the Company to, from time to time, bring Company personnel into Board meetings who (i) can provide additional insight into items being discussed because of personal involvement in these areas or (ii) should be given exposure to the Board.
6. Conflicts. Directors must disclose to other directors any potential conflicts of interest they may have with respect to any matter under discussion and, if appropriate, refrain from deliberations and voting on a matter in which they may have a conflict.
7. Public Disclosures. Except in unusual circumstances or as required by committee charters or as requested by senior management, directors are expected to follow the principle that senior management, as opposed to individual directors, provides the public voice of the Company. Directors receiving inquiries from institutional investors, the press, or others should refer them to the Chief Executive Officer or other appropriate officer of the Company.

## E. Board Committees

1. Key Committees. The Board shall have at all times an Audit Committee, a Compensation Committee and a Corporate Governance and Nominating Committee. Each such committee shall have a charter that has been approved by the Board. The Board may, from time to time, establish or maintain additional committees as necessary or appropriate.
2. Assignment and Rotation of Committee Members. The Corporate Governance and Nominating Committee shall be responsible for recommending to the Board the directors to be appointed to each committee of the Board. Except as otherwise permitted by applicable SEC and NASDAQ rules, each member of the Audit Committee, the Compensation Committee and the Corporate Governance and Nominating Committee shall be an “independent director” as defined by such rules. The Board does not believe in mandating fixed rotation of Board committee members and/or chairpersons, since at any time there may be reasons for maintaining continuity. The Board believes that in certain circumstances it may be appropriate for some rotation over time on a staggered basis to foster diverse views while at the same time ensuring continuity.
3. Committee Charters. In accordance with applicable NASDAQ rules, the charters of the Audit Committee, the Compensation Committee and the Corporate Governance and Nominating Committee shall set forth the purposes, goals and responsibilities of the committees as well as qualifications for committee membership, procedures for committee member appointment and removal, committee structure and operations and committee reporting to the Board. The Board shall, from time to time as it deems appropriate, review and reassess the adequacy of each charter and make appropriate changes.
4. Selection of Agenda Items. The Chairman of each committee, in consultation with the committee members, shall develop the committee’s agenda. At the beginning of the year each committee shall establish a schedule of subjects to be discussed during the year (to the extent practicable). The schedule for each committee meeting shall be furnished to all directors.
5. Frequency and Length of Committee Meetings. The chairman of each committee, in consultation with the committee members, shall determine the frequency and length of the committee meetings consistent with any requirements set forth in the committee’s charter. Special meetings may be called from time to time as determined by the needs of the business and responsibilities of the committees.

## F. Director Access to Management and Independent Advisors

1. Access to Officers and Employees. Directors have full and free access to officers and employees of the Company. Any meetings or contacts that a director wishes to initiate may

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be arranged through the Chief Executive Officer or the Secretary or directly by the director. The directors shall use their judgment to ensure that any such contact is not disruptive to the business operations of the Company and shall, to the extent appropriate, copy the Chief Executive Officer on any written communications between a director and an officer or employee of the Company.

2. Access to Independent Advisors. The Board and each committee have the power to hire and consult with independent legal, financial or other advisors for the benefit of the Board or such committee, as they may deem necessary, without consulting or obtaining the approval of any officer of the Company in advance. In the discretion of the Board or applicable committee, such independent advisors may (but need not) be the regular advisors of the Company. The Board or any such committee is empowered, without further action by the Company, to cause the Company to pay the compensation of such advisors as established by the Board or any such committee.

#### G. Director Compensation

1. Role of Board and Compensation Committee. The form and amount of director compensation shall be determined by the Board in accordance with the policies and principles set forth below. The Compensation Committee shall conduct an annual review of the compensation of the Company's directors. The Compensation Committee shall consider that questions as to directors' independence may be raised if director compensation and perquisites exceed customary levels, if the Company makes substantial charitable contributions to organizations with which a director is affiliated or if the Company enters into consulting contracts or business arrangements with (or provides other indirect forms of compensation to) a director or an organization with which the director is affiliated.
2. Form of Compensation. The Board believes that directors should be incentivized to focus on long-term shareholder value. Including equity as part of director compensation helps align the interest of directors with those of the Company's shareholders.
3. Amount of Compensation. The Company seeks to attract exceptional talent to its Board. Therefore, the Company's policy is to compensate outside directors competitively relative to comparable companies. The Company's management shall, from time to time, present a comparison report to the Board, comparing the Company's director compensation with that of comparable companies. The Board believes that it is appropriate for the Chairman of the Board and the chairmen and members of the committees to receive additional compensation for their services in those positions.
4. Director Stock Ownership. The Board believes that each director should acquire and hold shares of Company stock in an amount that is meaningful and appropriate to such director. Therefore, the Board may establish a target for stock ownership by each director and a

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time period during which this target is to be met. However, the Board may waive this requirement as it deems is appropriate.

5. Employee Directors. Directors who are also employees of the Company shall receive no additional compensation for Board or committee service.

#### H. Director Orientation and Continuing Education

1. Director Orientation. The Board and the Company's management shall conduct a mandatory orientation program for new directors. The orientation program shall include presentations by management to familiarize new directors with the Company's strategic plans, its significant financial, accounting and risk management issues, its compliance programs, its code of business conduct and ethics, its principal officers, its internal and independent auditors and its General Counsel and/or outside legal advisors. In addition, the orientation program shall include a review of the Company's expectations of its directors in terms of time and effort, a review of the director's fiduciary duties and visits to Company headquarters and, to the extent practical, certain of the Company's significant facilities. All other directors are also invited to attend the orientation program.
2. Continuing Education. Each director is expected to be involved in continuing director education on an ongoing basis to enable him or her to better perform his or her duties and to recognize and deal appropriately with issues that arise. The Company shall pay all reasonable expenses related to continuing director education.

#### I. Management Evaluation and Succession

1. Selection of Chief Executive Officer. The Board selects the Company's Chief Executive Officer in the manner that it determines to be in the best interests of the Company's shareholders.
2. Evaluation of Senior Executives. The Compensation Committee shall be responsible for overseeing the evaluation of the Company's senior executives. In conjunction with the Audit Committee, in the case of the evaluation of the senior financial executives, the Compensation Committee shall determine the nature and frequency of the evaluation and the persons subject to the evaluation, supervise the conduct of the evaluation and prepare assessments of the performance of the Company's senior executives, to be discussed with the Board periodically. The Board shall review the assessments to ensure that the senior executives are providing the best leadership for the Company over both the long- and short-term.
3. Succession of Senior Executives. The Compensation Committee shall be responsible for overseeing an annual evaluation of succession planning for senior executives. The Chief Executive Officer is to provide an annual report on succession planning and related development recommendations to the Compensation Committee, including short-term

succession plan delineating temporary delegation of authority in the event that the Chief Executive Officer or any other executive officer is unexpectedly unable to perform his or her duties.

At the resignation, retirement or removal of the Chief Executive Officer, the directors shall appoint an interim Chief Executive Officer. The interim Chief Executive Officer may be an existing director or company executive. In conjunction with this appointment, the Board shall commence a search for and/or appoint a permanent Chief Executive Officer.

J. Annual Performance Evaluation of the Board

The Corporate Governance and Nominating Committee shall oversee an annual self-evaluation of the Board to determine whether it and its committees are functioning effectively. The Corporate Governance and Nominating Committee shall determine the nature of the evaluation, supervise the conduct of the evaluation and prepare an assessment of the Board's performance, to be discussed with the Board. The purpose of this process is to improve the effectiveness of the Board and its committees and not to target individual Board members.

K. Periodic Review of the Corporate Governance Committee

The Corporate Governance and Nominating Committee shall, from time to time as it deems appropriate, review and reassess the adequacy of these Guidelines and recommend any proposed changes to the Board for approval.

L. Amendment, Modification and Waiver

The Guidelines may be amended, modified, or waived by the Board of Directors and waivers of these Guidelines may also be granted by the Nominating and Corporate Governance Committee, subject to the disclosure and other provisions of the Securities and Exchange Act of 1934 and the rules promulgated thereunder.

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**Attachment A**  
**CRITERIA FOR THE SELECTION OF DIRECTORS**

1. The nominee shall have the highest personal and professional ethics, strength of character, integrity and values.
2. The nominee shall be, about to be or have been a senior manager, chief operating officer, chief financial officer or chief executive officer of a relatively complex organization such as a corporation, university, foundation or unit of government with a proven record of success or, if in a professional or scientific capacity, be accustomed to dealing with complex problems, or otherwise shall have obtained and excelled in a position of leadership.
3. The nominee shall have the education, experience, intelligence, independence, fairness, reasoning ability, practical wisdom and vision to exercise sound, mature judgments on a macro and entrepreneurial basis on matters which relate to the current and long-term objectives of the Company.
4. The nominee shall have the competence and willingness to learn the Company's business and confidence to express his/her personal views.
5. The nominee shall be free and willing to attend regularly scheduled meetings of the board of directors and its committees over a sustained period and otherwise able to contribute a reasonable amount of time to the affairs of the Company and its affiliates. Participation on other boards is desirable in providing a breadth of experience to the board.
6. The nominee shall have the breadth of viewpoint and experience necessary for an understanding of the diverse and sometimes conflicting interests of shareholders and other constituencies, while still recognizing the particular responsibilities of the board of directors.
7. The nominee should be of such an age at the time of election to assure a minimum of three years of service as a director.
8. The nominee shall have the personality, tact, sensitivity and perspective to work well with others.
9. The nominee shall have the stature and capability to represent the corporation before the public, shareholders and other various individuals and groups that affect the Company. The nominee should have the capability to "network" with others for the benefit of the corporation.
10. The nominee shall be willing to appraise objectively the performance of management in the interest of the shareholders. The nominee shall possess an inquiring and independent mind willing to question management's assumptions when inquiry is appropriate.

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**Attachment B**  
**DEFINITION OF INDEPENDENCE**

It is important for investors to have confidence that individuals serving as Independent Directors do not have a relationship with the listed Company that would impair their independence. The board has a responsibility to make an affirmative determination that no such relationships exist through the application of Rule 5605(a)(2). Rule 5605(a)(2) also provides a list of certain relationships that preclude a board finding of independence. These objective measures provide transparency to investors and Companies, facilitate uniform application of the rules, and ease administration. Because Nasdaq does not believe that ownership of Company stock by itself would preclude a board finding of independence, it is not included in the aforementioned objective factors. It should be noted that there are additional, more stringent requirements that apply to directors serving in audit committees, as specified in Rule 5605(c).

The Rule's reference to the "Company" includes any parent or subsidiary of the Company. The term "parent or subsidiary" is intended to cover entities the Company controls and consolidates with the Company's financial statements as filed with the Commission (but not if the Company reflects such entity solely as an investment in its financial statements). The reference to Executive Officer means those officers covered in Rule 16a-1(f) under the Act. In the context of the definition of Family Member under Rule 5605(a)(2), the reference to marriage is intended to capture relationships specified in the Rule (parents, children and siblings) that arise as a result of marriage, such as "in-law" relationships.

The three year look-back periods referenced in paragraphs (A), (C), (E) and (F) of the Rule commence on the date the relationship ceases. For example, a director employed by the Company is not independent until three years after such employment terminates.

For the purposes of paragraph (A) of the Rule, employment by a director as an Executive Officer on an interim basis shall not disqualify that director from being considered independent following such employment, provided the interim employment did not last longer than one year. A director would not be considered independent while serving as an interim officer. Similarly, for purposes of paragraph (B) of the Rule, compensation received by a director for former service as an interim Executive Officer need not be considered as compensation in determining independence after such service, provided such interim employment did not last longer than one year. Nonetheless, the Company's board of directors still must consider whether such former employment and any compensation received would interfere with the director's exercise of independent judgement in carrying out the responsibilities of a director. In addition, if the director participated in the preparation of the Company's financial statements while serving as an interim Executive Officer, Rule 5605(c)(2)(A)(iii) would preclude service on the audit committee for three years.

Paragraph (B) of the Rule is generally intended to capture situations where a compensation is made directly to (or for the benefit of) the director or a Family Member of the director. For example, consulting or personal service contracts with a director or Family Member of the director would be analyzed under paragraph (B) of the Rule. In addition, political contributions to the campaign of a

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director or a Family Member of the director would be considered indirect compensation under paragraph (B). Non-preferential payments made in the ordinary course of providing business services (such as payments of interest or proceeds related to banking services or loans by a Company that is a financial institution or payment of claims on a policy by a Company that is an insurance company), payments arising solely from investments in the Company's securities and loans permitted under Section 13(k) of the Act will not preclude a finding of director independence as long as payments are non-compensatory if, for example, it is not on terms generally available to the public.

Paragraph (D) of the Rule is generally intended to capture payments to an entity with which the director or Family Member of the director is affiliated by serving as a partner, controlling Shareholder or Executive Officer of such entity. Under exceptional circumstances, such as where a director has direct, significant business holdings, it may be appropriate to apply the corporate measurements in paragraph (D), rather than the individual measurements of paragraph (B). Issuers should contact Nasdaq if they wish to apply the Rule in this manner. The reference to a partner in paragraph (D) is not intended to include limited partners. It should be noted that the independence requirements of paragraph (D) of the Rule are broader than Rule 10A-3(e)(8) under the Act.

Under paragraph (D), a director who is, or who has a Family Member who is, an Executive Officer of a charitable organization may not be considered independent if the Company makes payments to the charity in excess of the greater of 5% of the charity's revenues or \$200,000. However, Nasdaq encourages Companies to consider other situations where a director or their Family Member and the Company each have a relationship with the same charity when assessing director independence.

For the purposes of determining whether a lawyer is eligible to serve on an audit committee, Rule 10A-3 under the Act generally provides that any partner in a law firm that received payments from the issuer is ineligible to serve on that issuer's audit committee. In determining whether a director may be considered independent for purposes other than the audit committee, payments to a law firm would generally be considered under Rule 5605(a)(2), which looks to whether the payment exceeds the greater of 5% of the recipient's gross revenues or \$200,00; however, if the firm is a sole proprietorship, Rule 5605(a)(2)(B), which looks to whether the payment exceeds \$120,000, applies.

Paragraph (G) of the Rule provides a different measurement for independence for investment companies in order to harmonize with the Investment Company Act of 1940. In particular, in lieu of paragraphs (A)-(F), a director who is an "interested person" of the Company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee, shall not be considered independent.

Adopted Mar. 12, 2009 (SR-NASDAQ-2009-018); amended June 16, 2009 (SR-NASDAQ-2009-052); amended Jan. 11, 2013 (SR-NASDAQ-2012-109).

A majority of the board of directors must be comprised of Independent Directors as defined in Rule 5605(a)(2). The Company, other than a Foreign Private Issuer, must comply with the disclosure requirements set forth in the Item 407(a) of Regulation S-K. A Foreign Private Issuer must disclose in its next annual report (e.g., Form 20-F or 40-F) those directors that the board of directors has determined to be independent under Rule 5605(a)(2).

If a Company fails to comply with this requirement due to one vacancy, or one director ceases to be independent due to circumstances beyond their reasonable control, the Company shall regain compliance with the requirement by the earlier of its next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply with this requirement; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply with this requirement, the Company shall instead have 180 days from such event to regain compliance. A Company relying on this provision shall provide notice to Nasdaq immediately upon learning of the event or circumstances that caused the noncompliance.

Adopted Mar. 12, 2009 (SR-NASDAQ-2009-018).