2000

Investment Company Institute

Tax & Accounting Conference

Fund Governance and Board Reporting

David A. Sturms, Partner
Vedder, Price, Kaufman & Kammholz
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ATTACHMENT A

BOARD PRESENTATIONS
DISCUSSION ISSUES*

Board Structure

Do you have one Board or multiple Boards? Please explain your fund complex asset size.

In the case of multiple Boards, how do you allocate funds between or among the multiple Boards? e.g. by type of fund? By advisor (if using affiliated advisors or sub-advisors)? By distribution method? Other? What is the composition of the Boards in terms of asset size and number of funds?

In the case of multiple Boards, are there any special issues or considerations that differ from those posed by a Fund Complex that has only one Board? How does each Board satisfy itself that its funds are receiving adequate services and resources of the advisor?

What are the panelists' views as to a single Board versus a cluster format? Which do you prefer and why?

What committees of the Board do you have? What is their role and responsibility? How is service on the committees determined?

Board Governance

How frequently does your Board meet? When do you send materials out for their review?

Who internally manages the Board relationship? Does this person determine what information is necessary for the Board or do other parties have responsibility for particular areas? What is your involvement?

Does anyone employ ways to reduce paper sent to directors? e.g. send data on computer disk or maintain a "permanent file" (or fund directory) of agreements, contracts, policies and procedures? Additionally, does anyone prepare one set of minutes for multiple fund meetings held concurrently?

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*These Board Presentation Discussion Issues were originally prepared and presented jointly at the 1996 ICI Tax and Accounting Conference by Ronald M. Wolfsheimer (Chief Financial Officer – Calvert Group, Ltd.); Robert Gunia (Chief Financial Officer – Prudential Mutual Funds Management); Pamela A. McGrath (Managing Director & Treasurer of the Scudder Funds – Scudder, Stevens & Clark, Inc.); David A. Sturms (Partner – Vedder, Price, Kaufman & Kammholz); Richard J. Thomas (Vice President and Director of Accounting Policy – Federated Services Company).

In the case of multiple Boards, do you prepare materials for each cluster separately or do all Boards receive all data? Was this based on the Boards request or management's desires?

Which of the following best describes your group's use of outside legal counsel?

a. Same counsel serves all entities; adviser, fund and independent directors.

b. Fund and independent directors share counsel; adviser has own counsel.

c. Adviser and fund share same counsel; independent directors have separate counsel.

d. Adviser, fund and independent directors each have separate counsel.

How frequently does outside counsel attend the Board meetings and how involved are they? That is, what is their role with respect to reviewing Board material in detail for each meeting?

For Boards with responsibility for many funds, is all the material for each fund covered during the Board meeting or are just the highlights discussed?

Who sets director compensation? How frequently is it reviewed?

Does your Board have any policies or procedures re:

a. travel?

b. mandatory retirement age?

c. meeting attendance vis-à-vis continuing to serve as a director?

d. share ownership?

What has been your experience as to directors' ownership of fund shares, especially in a single Board structure?

Does your fund group have a director retirement program? If so, how was it created and what is it?

How much time do you spend on Board matters including Board presentations?

Do you meet regularly with any of the Board members? Is this one of your job accountabilities?

Special Presentations

What topics have been the basis for special presentations to your Boards (e.g. derivatives or NAV materiality)?

Has your Board adopted any operating policies - e.g. NAV materiality standards?

Contractual Reviews

Describe the nature of the information given to your directors in consideration of the renewal of management agreement. What review material do you provide the directors?

What information do you present for approval of distribution plan expenses? How frequently is it presented? Approved?

What do you give your Board for custodian and transfer agency contract renewals? Do the outside parties make presentations at the meetings? How frequently?

How frequently do you get fee quotes from auditors?

Portfolio Performance Review

What date is used for the review? e.g. Do you use the most recent quarter end? Month end? Is the data consistent among all presentations (advisor and distributor) in terms of dates used?

What information do you present for portfolio performance? Do you use a peer group or just an index? If a peer group is used, what is the criteria for selection? In the case of balanced and asset allocation funds, are the indices and portfolio composition evaluated separately? If so, how is allocation weighting evaluated?

How is risk/reward evaluated? Do you present Alpha, Beta, Sharpe ratios, et al.? If used, what information, if any, has been presented for the Board's understanding of these ratios and terms?

Do your portfolio managers attend every Board meeting to discuss their performance? If not at every meeting, then how frequently?

How are inter-portfolio swaps priced and presented to the Board?

Does the Board review portfolio turnover? If so, how? Are they concerned about low/high turnover as compared to peers?

Have you presented to the Board a list of Section 28(e) soft dollar arrangements that you have with brokers? What services are received from these brokers? Has this been approved or presented to the Board?

What information is presented on portfolio trade commissions? By broker? By trade? Average trade and commission?

How does the Board determine fair value of securities that are thinly traded and cannot be independently priced? What is the use of the Pricing Committee? Is this responsibility delegated to the Advisor?

Is there an internal pricing committee? If so, what does it take to override a price? Are you on that committee? What is presented to the Board for these overrides? When is it presented? e.g. the following day or at the next scheduled meeting?

How frequently do you present mark-to-market information on money market funds? What procedures are in place to notify the Board of a potential break in the NAV? That is, do you use a warning level? What is your policy with regards to convening a meeting for variances?

Other Recurring Presentations

What education have you presented to the Board concerning fund expenses and regulatory compliance?

What information is presented for regulatory compliance reporting?

What type of information is presented to satisfy the requirements of Rule 18f-3 regarding class expenses?

In the case of multiple auditors, how are their presentations made to the Board? Do they each sit in on the other's presentation?

Does your Board review the financial statements? If so, prior to issuance?

How are the independent auditors' Management Letters Comments presented to the Board? Do they include Management Responses?

Does your Board have closed sessions with your auditors or counsel? If so, do you get feedback on these sessions? If so, how?

What do you present to the Board concerning NAV errors?

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ATTACHMENT B

SAMPLE LIST

OF

BOARD ACTIVITIES

1. Renewal of Investment Advisory Agreements

(a) Considerations

- Terms of the agreement
- Nature and quality of services - advisory and other
- Capability of providing services
- Investment performance
- Reasonableness of the fee
- Economies of scale, breakpoints in advisory fee
- Fees paid to Adviser and its affiliates for services other than advisory
- Other fall-out benefits (including soft dollars) to Adviser and affiliates
- Expenses assumed by Adviser
- Adviser's costs
- Adviser's profits
- Comparative information for similar funds

(b) Procedures

- Board has duty to request and evaluate all necessary information
- Confer with experts
  - Independent legal counsel
  - Independent accountants
  - Other experts
- Initial Committee review of adequacy of materials provided
  - Review criteria used for selection of peer groups
- Independent Director consideration
- Full Board consideration

2. Renewal of Distribution Related Arrangements

(a) Underwriting Agreement (which includes the Rule 12b-1 Plan)

- Considerations
  - Terms of the agreement and Rule 12b-1 Plan
  - SEC factors
  - Problems and circumstances to be addressed
  - How plan addresses the problems
  - Nature and amount of expenditures
  - Overall costs
  - Anticipated benefits
  - Time for benefits to be achieved
  - Nature and quality of services provided
  - Carryover expenses and NASD caps

- Capability of providing distribution services
- Comparative information for similar funds
- Alternative fee arrangements
- Reasonable likelihood Plan will benefit Fund and Shareholders

• Procedures

(Similar to procedures for renewal of advisory agreement)

3. Review Service Arrangements

(a) Transfer Agency Agreement

• Review level of fees and compare to competitive rates

• Evaluate benefits to shareholders of current arrangements

• Consider contractual terms (liability assumed) and resolution of any problems

(b) Administrative/Shareholder Service Agreement

• Consider quality of services provided

• Consider fees paid

• Consider profitability

(c) Domestic Custody Agreement

• Review level of fees and compare to competitive rates

• Consider quality of services provided

• Consider contractual terms (liability assumed) and resolutions of any problems

- Review quality of services provided by subcustodians

(d) Foreign Custody Agreement

- Review level of fees and compare to competitive rates
- Consider quality of services provided
- Consider contractual terms (liability assumed) and resolution of any problems
- Make Rule 17f-5 findings
- Review quality of services provided by subcustodians

(e) Other Agreements or Arrangements

- Consider payments under fund supermarket arrangements, networking agreements and other relevant agreements

4. Select Auditors

(a) Assure independence and expertise of outside auditors

(b) Review outside auditor fees and functions

(c) Committee recommends outside auditors to the Board and the Board selects

5. Review Audited Financial Statements

(a) Review proposed scope of audits with outside auditors

(b) Review completion of audits with outside auditors

- Review Fund compliance with IRC requirements
- Review Fund management letter, if any, and management response thereto

(c) Evaluate internal accounting controls

- Review financial controls reports for affiliated service providers and for non-affiliated service providers

6. Review Insurance Coverage

(a) Renewal of fidelity bond

- Consider form of bond and amount of coverage
- Consider allocation of premium and allocation of coverage pursuant to joint insured agreement
- Consider participation of Adviser affiliates (e.g., whether to use joint bond)
- Review report of claims, losses and payments under bond

(b) Renewal of professional liability coverage (D&O/E&O)

- Consider form of policy and amount of coverage
- Consider allocation of premiums
- Consider participation of Adviser affiliates (e.g., whether to use joint policy)
  - Consider separate coverage for Independent Directors
- Review report of claims, losses and payments under bond

7. Review Valuation of Portfolio Securities

(a) Review pricing services and pricing matrixes used

- Evaluate reliability of prices provided
- Consider any problems experienced
- Review any procedures for overriding prices provided by services

(b) Review procedures for "fair value" pricing of securities

(c) Establish standards for the materiality of errors when calculating NAV

- Review frequency and magnitude of pricing errors

(d) Review appropriateness of use of amortized cost valuation for short-term Instruments

8. Review Money Market Fund Operations

(a) Review continuing appropriateness of amortized cost pricing and money market fund procedures

(b) Review procedures to assess quality of instruments

(c) Review use of indexes in making "approximates par" decision

(d) Review issues raised by complex instruments

9. Review Trading Practices

(a) Review Adviser's best execution policies and practices

(b) Review brokers and dealers used

(c) Review brokerage costs (commissions and spreads) and principal transactions

(d) Review sources, amounts and uses of soft dollars and evaluate appropriateness of soft dollar practices

(e) Review Adviser's policy for allocating investment opportunities

(f) Review use of brokerage for Fund sales

(g) Review use of brokerage for payment of Fund expenses

(h) Review ability and desirability of recapturing commissions

10. General Compliance Oversight

(a) Review Code of Ethics

- Review Adviser's annual issues and certification report

- Review annual report prepared by Adviser regarding compliance under the Code and suggestions for amendments

- Consider effectiveness of the Code, any changes in industry standards and appropriateness of continuing the Code or amending the Code

(b) Review systems in place to assure compliance with:

- Investment polices and restrictions

- Pricing

- IRC requirements

- SEC filings requirements

- Advertising rules

- All exemptive orders, exemptive rules and no-action letters

- Procedures established by the Board

- Undertakings made in response to SEC inspections

- Money market fund rules

- Blue sky registration requirements

(c) Consider whether Board has set all necessary standards for operations

- Use of derivatives

- Pricing of new securities

- Quality standards for service providers

(d) Review shareholder correspondence activity

11. Independent Director Compensation and Recruitment

(a) Regularly review Independent Director compensation

- Compare to other funds and groups

(b) On an as needed basis — recruit Independent Director to fill vacancies

- Preliminary check for statutory or practical disqualifications

- Consider qualification to serve (time, experience, temperament)

(c) Regular Board performance review

- Review performance of Board as a whole — make suggestions for more effective operations and oversight

- Review appropriateness of continuing service by individual Board members

(d) Review guidelines and procedures for Independent Director recruitment, retention and ongoing education

12. Approve Post - Effective Amendment

(a) Consider continuing appropriateness of investment policies

(b) Consider continuing adequacy of risk disclosure

(c) Perform "due-diligence" on registration statement

(d) Review MD&A discussion in annual report

13. Review Procedures Established to Meet Regulatory Requirements; Consider Continuing Appropriateness and any Need to Amend

14. Principal transactions with affiliates (Rule 17a-7)

(a) Purchase of securities during an underwriting in which affiliate participates (Rule 10f-3)

(b) Purchase of securities on agency basis from affiliate (Rule 17e-1)

(c) Procedures for selecting counterparties for Repurchase Agreements

(d) Special procedures for illiquid or restricted securities

15. Review Investment Operations

(a) Performance

- Review current and longer-term performance
- Compare to benchmark index as well as to competitive funds
- Review performance attribution

(b) Conformance of activities with policies and restrictions

- Review any new types of instruments purchased, expertise of adviser and any pricing difficulties
- Review measures of risk for portfolios

(c) Monitor portfolio turnover

- Review actual portfolio turnover and related prospectus disclosure
- Compare to industry norms

(d) Monitor liquidity

- Review types of securities that are considered illiquid and percentage of the portfolio
- Review overall liquidity of portfolio

(e) Monitor use of derivatives

- Review types of derivatives purchased, uses of such instruments and percentage of the portfolio

(f) Pricing of securities

- Review prices of any securities priced based upon "fair value"

- Review price overrides

16. Review Sales and Marketing

(a) Review types of advertising and marketing practices

(b) Review report on sales and redemptions

- Compare with industry-wide activity

- Major marketing campaigns

- Major changes in marketing activities

(c) Review quarterly report on Rule 12b-1 expenditures

- NASD cap amounts and purposes of expenditures

17. Review Shareholder Servicing Quality

(a) Review report on shareholder service expenditures

(b) Review report on quality of shareholder services

18. Review Trading Reports

(a) Review purchases from affiliates

- Review 17a-7 transactions

  - Review justification for transactions between portfolios to assure best interests of both Funds

- Review 17e-1 purchases

  - Review compensation paid and comparability to prices paid by fund to others/prices charged by affiliate to others

(b) Review purchases during underwriting (10f-3)

19. Monitor Money Market Fund Operations

(a) Monitor deviation in amortized cost pricing (versus market NAV)

(b) Monitor appropriateness of weighted average maturity

- Compare with industry norms

(c) Monitor credit quality

- Review additions to or deletions from approved list
- Review quarterly purchases
- Review unusual types of instruments

20. Declare and/or Ratify Dividends

21. Compliance

(a) Perform oversight of Fund compliance

- Review report from Adviser regarding
  - Conformance with investment practices
  - Necessary reports filed with SEC

(b) Review any SEC inspection reports of Fund or Adviser

22. Consider Committee Reports as presented

23. Monitor Litigation

24. Amend Board-Set Policies on an As Needed Basis

(a) Time of day for calculation of NAV

(b) Approve changes in securities depositories used

(c) Review any changes to the Adviser's policies for voting proxies

(d) Appoint persons authorized to give instructions to custodians and transfer agents

(e) Delegating to Adviser regarding repurchase agreements

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ATTACHMENT C-1

SAMPLE

AUDIT COMMITTEE CHARTER

ADOPTED _____, 2000

I. PURPOSE

The Audit Committee is a committee of the Board of the Fund. Its primary function is to assist the Board in fulfilling certain of its responsibilities.

The Audit Committee serves as an independent and objective party to monitor the Fund's accounting policies, financial reporting and internal control system. The Audit Committee also serves to provide an open avenue of communication among the independent accountants, Fund management, and the Board.

- Fund management has the primary responsibility to establish and maintain systems for accounting, reporting, and internal control.
- The independent accountants have the primary responsibility to plan and implement a proper audit of the accounting, reporting, and internal control practices.

The Audit Committee may have additional functions and responsibility as deemed appropriate by the Board and the Audit Committee.

II. COMPOSITION

The Audit Committee shall be comprised of three or more board members as determined by the Board, each of whom shall be an independent board member, and free from any relationship that, in the opinion of the Board, would interfere with the exercise of his or her independent judgment as a member of the Audit Committee. For purposes of the Audit Committee, a board member is independent if he or she is not an "interested person" of the Fund as that term is defined in the Investment Company Act of 1940 **[and meets the independence requirements set forth in New York Stock Exchange Rule 303.01(B)(3)]*** . All members of the Audit Committee shall have a working familiarity with basic finance and accounting practices, and at least one member shall have accounting or related financial management expertise. Audit Committee members may enhance their familiarity with finance and accounting by participating in educational programs from time to time, at the expense of the Fund.

The members and chairman of the Audit Committee shall be elected by the Board annually and serve until their successors shall be duly elected and qualified.

***For NYSE-listed closed-end funds.**

III. MEETINGS

The Audit Committee shall meet three times annually, or more frequently as circumstances dictate. Special meetings (including telephone meetings) may be called by the Chair or a majority of the members of the Audit Committee upon reasonable notice to the other members of the Audit Committee. As part of its job to foster open communication, the Audit Committee should meet annually with senior Fund management responsible for accounting and financial reporting and the independent accountants in separate executive sessions to discuss any matters that the Audit Committee, or any of such other persons, believes should be discussed privately.

IV. RESPONSIBILITIES AND DUTIES

To fulfill its responsibilities and duties the Audit Committee shall:

A. Duties/Reports/Review

1. Review this Charter, annually, and recommend changes, if any, to the Board.

2. Review, annually, with Fund management and the independent accountants, the organizational structure, reporting relationship, adequacy of resources and qualifications of the senior Fund management personnel responsible for accounting and financial reporting.

3. Review, annually, with Fund management and the independent accountants, their separate evaluation of the adequacy of the Fund's system of internal controls.

4. Review, with Fund management and the independent accountants, the internal reports, if any, to Fund management prepared by the Manager's internal auditing department related to the Fund's systems for accounting, reporting and internal controls and Fund management's response.

5. Review, annually, with Fund management and the independent accountants, policies for valuation of Fund portfolio securities, and the frequency and magnitude of pricing errors.

[6. Review with Fund management and the independent accountants, the Fund's audited financial statements (including, but not limited to, the matters required to be discussed by statement on Auditing Standards No. 61), and recommend to the Board, if appropriate, that the audited financial statements be included in the Fund's annual report to shareholders required by Section 30(e) of the Investment Company Act of 1940 and Rule 30d-1 thereunder.]*]

***For NYSE-listed closed-end funds.**

B. Independent Accountants

1. Recommend to the Board the selection of the independent accountants, considering independence, performance and effectiveness, and approve the fees and other compensation to be paid to the independent accountants **[on the condition that the independent accountants are ultimately accountable to the Board and the Audit Committee and that the Audit Committee and the Board, consistent with the requirements of the Investment Company Act of 1940 and relevant state law, have the ultimate authority and responsibility to select, evaluate and, where appropriate, replace the independent accountants (or to nominate the independent accountants to be proposed for shareholder approval in any proxy statement)].*

2. On an annual basis, request, receive and review the independent accountants' specific representations as to their independence, including identification of all significant relationships the accountants have with the Fund, Fund management and any affiliate and any material service provider of the Fund **[(including, but not limited to, disclosures regarding the independent accountants' independence required by Independence Standards Board Standard No. 1), and recommend that the Board take appropriate action, if any, in response to the independent accountants' report to satisfy itself of the independent accountants' independence].***

3. Meet with the independent accountants and Fund management to review the scope of the proposed audit for the current year, and at the conclusion thereof review such audit, including any comments or recommendations of the independent accountants or Fund management.

4. Review the management letter prepared by the independent accountants and Fund management's response.

5. Consider for approval any significant special projects for the Fund by the independent accountants.

C. Financial Reporting Processes

1. Consider the independent accountants' judgment about the quality and appropriateness of the Fund's accounting policies as applied in its financial reporting.

2. Review any major changes to the Fund's accounting policies as suggested by the independent accountants or Fund management.

***For NYSE-listed closed-end funds.**

3. Review any significant disagreement among Fund management and the independent accountants in connection with the preparation of the Fund's annual and semi-annual reports, including any difficulties encountered and any restrictions on the scope of the work or access to information.

D. Process Improvements

Review with the independent accountants and Fund management changes or improvements in significant accounting and auditing processes that have been implemented.

E. Legal Compliance

1. Review Fund management's monitoring of and system in place to ensure that the Fund's financial statements, reports, disclosures and other financial information disseminated to governmental organizations and the public satisfy legal requirements.

2. Review, with the counsel to the independent board members, legal compliance matters.

3. Review, with the counsel to the independent board members, any legal matter that could have a significant effect on the fund's financial statements.

F. Other Responsibilities

1. Investigate any other matter brought to its attention within the scope of its duties, with the power to retain outside counsel or other experts for this purpose at the expense of the Fund, if, in its judgment, that is appropriate.

2. Perform any other activities consistent with this Charter, the Fund's Charter, By-Laws and governing law, as the Audit Committee or the Board deems necessary or appropriate.

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***For NYSE-listed closed-end funds.**

ATTACHMENT C-2

SAMPLE

NOMINATING AND GOVERNANCE COMMITTEE CHARTER
ADOPTED _____, 2000

I. PURPOSE

The Nominating and Governance Committee is a committee of the Board of the Fund. Its primary function is to identify and recommend individuals for membership on the Board and oversee the administration of the Board Governance and Procedures Guidelines.

II. COMPOSITION

The Nominating and Governance Committee shall be comprised of three or more board members[1] as determined by the Board, each of whom shall be an independent board member, and free from any relationship that, in the opinion of the Board, would interfere with the exercise of his or her independent judgment as a member of the Nominating and Governance Committee. For purposes of the Nominating and Governance Committee, a board member is independent if he or she is not an "interested person" of the Fund as that term is defined in the Investment Company Act of 1940.

The members and Chairman of the Nominating and Governance Committee shall be elected by the Board annually and serve until their successors shall be duly elected and qualified.

III. MEETINGS

The Nominating and Governance Committee shall meet two times annually, or more frequently as circumstances dictate. Special meetings (including telephone meetings) may be called by the Chair or a majority of the members of the Nominating and Governance Committee upon reasonable notice to the other members of the Nominating and Governance Committee.

IV. RESPONSIBILITIES AND DUTIES

To fulfill its responsibilities and duties the Nominating and Governance Committee shall:

A. Board Nominations and Functions

1. Identify and recommend individuals for director membership on the Board. The principal criterion for selection of candidates is their ability to carry out the responsibilities of the Board. In addition, the following factors are taken into consideration:

[1] To the extent the Fund is organized as a Massachusetts business trust, any references to "Directors" or "Board members" shall be deemed to mean "trustees."

(a) The Board collectively should represent a broad cross section of backgrounds, functional disciplines and experience.

(b) Candidates should exhibit stature commensurate with the responsibility of representing shareholders.

(c) Candidates shall affirm their availability and willingness to strive for high attendance levels at regular and special meetings, and participate in committee activities as needed.

(d) Candidates should represent the best choices available based upon thorough identification, investigation and recruitment of candidates.

2. Review the Board Governance Procedures and Guidelines, annually, and recommend changes, if any, to the Board.

3. Periodically review the composition of the Board to determine whether it may be appropriate to add individuals with different backgrounds or skill sets from those already on the Board.

4. Review annually, Independent Director compensation, including compensation deferral programs and Fund ownership criteria, and recommend any appropriate changes to the Independent Directors as a group.

5. Coordinate with legal counsel to the Independent Directors, an annual evaluation of the performance of the Board.

6. Oversee the development and implementation by the Fund's investment manager and legal counsel for the Independent Directors of a program for the orientation of new Independent Directors and ongoing education for Independent Directors.

B. Committee Nominations and Functions

1. Identify and recommend individuals for membership on all committees and review committee assignments at least annually.

2. Review as necessary the responsibilities of any committees of the Board, whether there is a continuing need for each committee, whether there is a need for additional committees of the Board, and whether committees should be combined or reorganized.

C. Other Powers and Responsibilities

1. Review this Charter, annually, and recommend changes, if any, to the Board.

2. Monitor the performance of legal counsel employed by the Fund and the Independent Directors, and be responsible for the supervision of counsel to the Independent Directors.

3. Investigate any other matter brought to its attention within the scope of its duties, with the power to retain outside counsel or other experts for this purpose at the expense of the Fund, if, in its judgment, that is appropriate.

4. Perform any other activities consistent with this Charter, the Fund's Charter, By-Laws and governing law, as the Nominating and Governance Committee or the Board deems necessary or appropriate.

5. Maintain minutes of committee meetings and report to the Board.

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ATTACHMENT C-3

SAMPLE

GOVERNANCE PROCEDURES AND GUIDELINES
ADOPTED _____, 2000

I. STATEMENT OF PURPOSE

The purpose of these Procedures and Guidelines is to provide a structure for the operation of the Board of Directors[1] of the Fund, particularly the Independent Directors, upon which all members of the Board agree and which will guide those parties who deal with the Board. The primary responsibility of the Board is to represent the interests of the shareholders of the Fund and to provide oversight of the management of the Fund. The Investment Company Act of 1940 (the "Act") and the regulations of the Securities and Exchange Commission place particular emphasis and responsibility upon the Independent Directors, as the "watchdogs" for the Fund's shareholders, to serve as an independent check upon management. These Procedures and Guidelines, among other things, seek to further enhance the effectiveness of the Independent Directors in performing their duties.

II. COMPOSITION OF THE BOARD AND SELECTION OF DIRECTORS

A. Independent Directors

Independent Directors shall be those directors of the Fund who are not "interested persons" of the Fund as defined by the Act. Furthermore, any individual who shall have been an "interested person" of the investment manager or distributor of the Fund, whether currently or in the past, shall not be eligible to serve as an Independent Director. In addition, to avoid any appearances of conflict, Independent Directors shall not have material business, financial or family relationships or other contacts with the manager or the distributor. The final determination of a director's independence, whether as a matter of general status or with regard to a particular issue, shall be subject to final determination by a majority of the other Independent Directors of the Fund, upon the advice of their legal counsel.

Independent Directors shall compose at least 75% of the total membership of the Board at all times. In the event that, due to the retirement or death of an Independent Director, the number of Independent Directors falls below 75% of the number of all directors, one or more of the interested directors shall resign or shall assume non-voting ex-officio status until sufficient

[1] To the extent the Fund is organized as a Massachusetts business trust, any references to "directors" shall be deemed to mean "trustees."

Independent Directors shall have been appointed or elected so as to return Independent Directors to a 75% majority.

In order to ensure compliance with these provisions of these Procedures and Guidelines, all Independent Directors shall annually complete a questionnaire prepared by the legal counsel to the Independent Directors regarding their affiliations and activities. Such counsel shall review the questionnaires and shall bring to the attention of the Independent Directors any issue as to the independence of any director which shall be raised by answers to the questionnaire.

B. Selection of Directors

The identification and recommendation of individuals for Board membership shall be the responsibility of the Nominating and Governance Committee. The selection and nomination of Independent Directors shall be by vote of a majority of the incumbent Independent Directors, and the selection and nomination of interested directors shall be by vote of a majority of the directors.

The Nominating and Governance Committee will independently evaluate candidates for Board membership. Suggestions for candidates may be submitted to the Committee by other directors, by shareholders or by the Fund's investment manager. With regard to candidates for interested director positions, the Nominating and Governance Committee and the Board shall give reasonable deference to the Fund's investment manager's suggestions of candidates.

The Nominating and Governance Committee shall establish written criteria for candidates for Board membership, which criteria shall include personal characteristics desirable in all directors, as well as experience and knowledge factors which should be represented on the Board.

C. Orientation and Continuing Education

The Nominating and Governance Committee shall oversee the development by the Fund's investment manager and legal counsel to the Independent Directors of a program for the orientation of new Independent Directors. This orientation is intended to familiarize new Independent Directors with (i) their responsibilities under applicable corporate law and the Act, (ii) the operation of the Fund and its material service providers, and (iii) the industry in which the Fund operates. Furthermore, the Nominating and Governance Committee shall also oversee a continuing education program, to be developed by the Fund's investment manager and legal counsel to the Independent Directors, to keep the Independent Directors abreast of industry and regulatory developments.

III. ORGANIZATION AND PERFORMANCE OF THE BOARD

A. Structure of the Board

The Board shall have two standing committees, the Audit Committee and the Nominating and Governance Committee, which shall each be composed entirely of Independent Directors. Each of these Committees shall prepare a charter, which shall be subject to approval by vote of a majority of the directors, including a separate vote of a majority of the Independent Directors.

The Independent Directors shall have the ability to meet and to perform such functions and take such actions as are assigned to them by the Board or the Fund's charter or by-laws, or as provided for or permitted under applicable law. A meeting of the Independent Directors may be called by any Independent Director upon reasonable notice to the other Independent Directors. Action shall be approved by a majority of the Independent Directors present at a meeting where a quorum of half of the Independent Directors are present (in person or by telephone) or by unanimous written consent of the Independent Directors.

The Independent Directors shall annually select from among them a lead Independent Director (the "Lead Director"). The Lead Director shall be the representative of the Independent Directors in the matters of the Fund between meetings. The Lead Director shall be responsible for: (i) chairing all meetings of Independent Directors; (ii) working with legal counsel to the Independent Directors and the Fund's investment manager to determine the agenda for Board meetings; (iii) serving as the principal contact for and facilitating communication between the Independent Directors and the Fund's service providers; and (iv) any other duties that the Independent Directors may delegate to the Lead Director.

The Independent Directors are expressly permitted to and shall retain, at the expense of the Fund, legal counsel to advise them as to their responsibilities under state and federal law. Such counsel shall not represent and shall be independent, as determined by the Independent Directors, of the Fund's investment manager and distributor, although such counsel may represent the Fund or similarly situated investment companies. The Independent Directors shall determine the functions for such counsel.

The Independent Directors are expressly permitted to and shall retain, at the expense of the Fund, such other experts or professionals as they deem necessary or desirable in the fulfillment of their duties and responsibilities.

To the extent any provision of these Procedures and Guidelines are inconsistent with the Fund's charter or by-laws or any prior action of the Board, to the fullest extent permitted under applicable law, these Procedures and Guidelines shall govern and any ambiguity will be resolved in favor of these Procedures and Guidelines. In addition, notwithstanding the express authorization in these Procedures and Guidelines, to the extent any vote, action or determination hereunder requires further action by the Board, such vote, action or determination shall be

subject to approval by the requisite vote of the Board and the directors shall generally defer to the judgment of such vote, action or determination.

B. Meetings of the Board

The Board shall meet at least [six] times per year at the offices of the Fund's investment manager or at such other location as shall be acceptable to the Board. The agenda and all supporting materials for each meeting shall be prepared by the Fund's investment manager, in consultation with the Lead Director and the legal counsel to the Independent Directors, and shall be transmitted to the Board at least ten calendar days prior to the meeting. Board members are expected to be prepared for and attend all regularly scheduled Board and Committee meetings.

From time to time the Board may meet in executive session of the Board, with other persons participating only to the extent specifically invited, to discuss such issues as it believes are more appropriately addressed in an executive session.

The Independent Directors shall meet separately if and as they deem appropriate. In addition, the Independent Directors shall meet separately in connection with their consideration of the Fund's advisory and underwriting agreements.

The legal counsel to the Independent Directors shall attend all Board and Committee meetings.

The legal counsel to the Independent Directors and representatives of the Fund's investment manager and other service providers shall be available for consultation with the Independent Directors from time to time as requested by the Independent Directors.

C. Board Performance

On an annual basis, the Independent Directors shall meet in executive session and discuss the performance of the Board.

IV. COMPENSATION AND SERVICE

A. Compensation of Independent Directors

The compensation of Independent Directors shall be determined by the Independent Directors, with due regard to the number, size, and complexity of the investment companies for which the Independent Directors serve, the time commitment required for meetings and other duties, the level of compensation paid by other fund groups, and the compensation levels necessary to attract qualified Independent Directors, as well as other factors which the Independent Directors may deem relevant.

B. Compensation of Interested Directors

The compensation, if any, of interested directors shall be determined and paid by the Fund's investment manager or its affiliates.

C. Ownership of Fund Shares by Directors

The Independent Directors have established the expectation that within three years of becoming a member of the Board, an Independent Director will have invested an amount in those funds he or she oversees in the aggregate equal to at least one times the amount of the annual compensation received from such funds, with investments allocated among the funds based upon the particular Independent Director's personal investment needs, except that each Independent Director is expected to own shares of each representative type of fund (e.g., Money Market, Tax-Exempt Bond, Taxable Bond, Equity, and International).

Each interested director is also encouraged to own an amount of shares (based upon their own individual judgment) of those funds that he or she oversees that best fit his or her own appropriate investment needs.

D. Term of Office and Retirement Age

Each elected or appointed director shall serve until the next shareholder election (and until the election and qualification of a successor), or until death, resignation or retirement, or removal (as provided in the Fund's charter). Grounds for removal with cause include a demonstrated unwillingness or incapacity to carry out the responsibilities of a director as determined by a majority of the Independent Directors.

A director will not be renominated for election by shareholders in the calendar year of the director's 72nd birthday. If the Fund does not have an election by shareholders in that year, retirement will take effect no later than the end of the calendar year of his or her 72nd birthday.

E. Insurance

The Fund shall obtain and maintain directors' and officers' liability insurance and errors and omissions insurance in an amount and type that the Independent Directors deem satisfactory and reasonable.

V. ROLE AND REVIEW OF THE INVESTMENT MANAGER

The Board shall establish criteria by which the performance of the manager will be evaluated and shall review such performance on a regular and continuing basis. These criteria shall include, but are not limited to, expectations with regard to competitive performance and fees.

* * * *

ATTACHMENT C-4

Name:_____

_____ Fund

Sample

Annual NYSE Questionnaire for Audit Committee Members

This questionnaire has been sent because the Fund must comply with certain requirements of the New York Stock Exchange ("NYSE") regarding who may serve on a listed company's audit committee. These requirements are found in Section 303 of the NYSE Listed Company Manual ("Listed Company Manual"). Please provide the Fund with answers to the questions set forth below.

1. Financial Literacy[1]

Are you financially literate?[2]

? Yes ? No

2. Accounting Expertise[3]

Do you have any accounting or related financial management expertise?[4]

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[1] Listed Company Manual, §303.01(B)(2)(b).

[2] Similar requirements adopted by the American Stock Exchange ("MEX") and the NASDAQ Stock Market ("NASDAQ") provide some guidance on the definition of "financially literate." To be "financially literate" under AMEX and NASDAQ requirements you must "be able to read and understand fundamental financial statements, including a company's balance sheet, income statement and cash flow statement." The NYSE, however, declined to codify the AMEX and NASDAQ definitions, relying instead on the Board's business judgment in determining what constitutes "financially literate."

[3] Listed Company Manual, §303.01(B)(2)(c).

[4] Similar requirements adopted by the AMEX and NASDAQ provide some guidance on the definition of "accounting or related financial management experience." Under AMEX and NASDAQ requirements, "accounting or related financial management experience" is "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." The NYSE, however, declined to codify the AMEX and NASDAQ definition, relying instead on the Board's business judgment in determining what constitutes "accounting or related financial management expertise."

? Yes ? No

If yes, please describe:

3. Independence

a. Employees[5]

Within the past three years, have you been an employee or a non-employee executive officer of the Fund or any of its affiliates?[6]

? Yes ? No

If yes, please describe:

b. Business Relationships[7]

Within the past three years, have you been a partner, controlling shareholder, or executive officer of an organization that has a business relationship[8] with the Fund?

? Yes ? No

If yes, please describe:

Within the past three years, have you had a direct business relationship[9] with the Fund (e.g., consultant)?

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5 Listed Company Manual, §303.01(B)(2)(c).

6 "Affiliate" includes a subsidiary, sibling company, predecessor, parent company, or former parent company. Listed Company Manual, §303.02(B).

7 Listed Company Manual, §303.01(B)(3)(b).

8 "Business Relationships" can include commercial, industrial, banking, consulting, legal, accounting and other relationships. Listed Company Manual, §303.01(B)(3)(b).

9 "Business Relationships" can include commercial, industrial, banking, consulting, legal, accounting and other relationships. Listed Company Manual, §303.01(B)(3)(b).

? Yes ? No

If yes, please describe:

c. Cross Compensation Committee Link[10]

Are you employed as an executive of another corporation where any of the Fund's executives serve on that corporation's compensation committee?

? Yes ? No

If yes, please describe:

d. Immediate Family[11]

Has any immediate family member[12] been an executive officer of the Fund or any of its affiliates?[13]

? Yes ? No

If yes, please describe:

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[10] Listed Company Manual, §303.01(B)(3)(c).

[11] Listed Company Manual, §303.01(B)(3)(d).

[12] "Immediate Family Member" includes a person's spouse, parents, children, sibling, mothers-in-law and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than employees) who shares such person's home. Listed Company Manual, §303.02(A).

[13] "Affiliate" includes a subsidiary sibling company, predecessor, parent company, or former parent company. Listed Company Manual, §303.02(B).

e. Other[14]

Do you have any other relationship to the Fund that may interfere with the exercise of your independence from management and the Fund.

? Yes ? No

If yes, please describe:

The foregoing is correct to the best of my knowledge, information and belief.

Date: _____, 2000

_____
Signature

[14] Listed Company Manual, §303.01(B)(2)(a).

ATTACHMENT D

2000

Investment Company Institute

Tax & Accounting Conference

"INDEPENDENCE:

IS IT A STATE OF MIND OR CAN IT BE REGULATED?"

David A. Sturms, Partner
Stephanie Grauerholz-Lofton, Associate
Vedder, Price, Kaufman & Kammholz
Chicago, Illinois

September 17-20, 2000
Sheraton Chicago Hotel and Towers
Chicago, IL

I. INTRODUCTION

Over the past year, the Securities and Exchange Commission ("SEC" or "Commission") has introduced a number of initiatives designed to enhance the independence of directors and the corporate governance process. Notably, two recent SEC initiatives seek to establish bright lines of independence for two of the most important tools used by independent directors: legal counsel and independent public accounting firms.

While we applaud the SEC's efforts to encourage and foster an atmosphere of independence, we believe that a regulatory scheme that artificially restricts the use of certain tools (legal counsel and auditors) is misguided. Rather, we believe that the corporate governance process is better served by (i) providing guidance to directors on independence, (ii) making available to directors the tools they believe are appropriate to enhance their independence, without restraint of choice and (iii) letting the "sun shine in" on the selection, use and possible conflicts of those tools. We believe that the disinfectant of sun shine, rather than bright-line (artificial) rules, will result in a better, more effective check on *real* conflicts of interest.

Under the SEC's proposed rules regarding independent directors of investment companies, legal counsel to a fund's independent directors, if any, would have to be "independent." A person would be considered an "independent legal counsel" if the directors "reasonably believe the person and his law firm, partners, and associates have not acted as legal counsel for the fund's investment adviser, principal underwriter, administrator (collectively, "management organizations"), or any of their control persons at any time since the beginning of the fund's last two completed fiscal years.[1]

Under the SEC's proposed rules regarding public accounting firms, the SEC articulated four principles to govern the determination of whether an accountant is independent of its audit client. The proposal provides that an accountant is not independent whenever, during the audit and professional engagement period, the accountant: "(i) has a mutual or conflicting interest with the audit client, (ii) audits the accountant's own work, (iii) functions as management or an employee of the audit client, or (iv) acts as an advocate for the audit client."[2]

The SEC has proposed these rules on the good faith belief that "independence" is a governing principle required to effectively manage and operate a company for the benefit of shareholders. For the proposed independent director rules, the SEC believes the independence of the directors is enhanced by, and the directors are more effective when, counsel representing the independent directors meets strict, bright-line rules of independence. For the proposed auditor independence rules, the SEC believes that since investors rely heavily on the independence of the auditors in performing their review of a company's financial statements, an auditor must be independent in both fact and appearance.

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[1] See Proposed Rule 0-1(a)(6)(i) of Role of Independent Directors of Investment Companies, Release No. 33-7754 (October 15, 1999) ("Release No. 33-7754").

[2] See Proposed Rule: Revision of the Auditor's Independence Requirements, Release No. 33-7870, at 3 (June 30, 2000) ("Proposing Release").

As SEC Chairman Levitt has stated, independence is more a "state of mind" than a qualification that can be regulated. Yet, the SEC is now seeking to do just that: regulate independence.

Almost paradoxically, the SEC proposal on fund director independence contains an aspect that is seemingly at odds with its other initiatives involving audit committees and auditors. Coincident with the SEC "blessed" best practices for audit committees[3], new New York Stock Exchange ("NYSE") rules regarding audit committees and the recent SEC proposal on auditors (all of which seek to increase the amount of disclosure to investors regarding the audit committee structure and functions), the fund director proposal would, for *mutual funds*, reduce, if not eliminate, the information going to investors about audit committees and auditors. Specifically, this proposal would eliminate the requirement for shareholder ratification of a fund's independent auditors for companies that adopt an audit committee charter. Currently, the Investment Company Act of 1940 (the "1940 Act") requires that upon selection by the independent directors of a fund's independent public accountants, the shareholders must ratify or reject the selection of the fund's independent public accountants at the next annual meeting (if such a meeting is held).[4] The SEC's proposal exempts a mutual fund from obtaining shareholder ratification if the fund's board of directors adopts an audit committee charter setting forth the committee's structure, duties, powers, and methods of operation.[5] The SEC's reasoning for this proposal was based on the belief that shareholders rarely contest votes over the ratification of the fund's independent accountant and continuous oversight by an independent audit committee can provide greater protection to shareholders than the current requirement for shareholder ratification of a fund's independent auditors.[6] Yet, this proposal does not set forth any standards for the charter, simply that a fund must have one.

II. PROPOSED RULES REGARDING ROLE OF INDEPENDENT DIRECTORS

A. Rule Proposals Summarized

In October 1999, the SEC issued proposed rules designed to enhance the independence and effectiveness of mutual fund directors and to provide investors with greater information about fund directors.[7] In the proposals, the SEC discussed the fact that mutual funds are operated for the benefit of their shareholders, however, the funds are "organized and operated by people whose primary loyalty and pecuniary interest lie outside the enterprise."[8] The SEC's rule

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3 Report of the Blue Ribbon Committee, "Improving the Effectiveness of Corporate Audit Committees" (April 1999).

4 Section 32(a)(2) [15 U.S.C. 80(a)(2)].

5 Proposed Rule 32a-4(c) of Release No. 33-7754, supra note 1. In addition, the audit committee must be responsible for overseeing the fund's accounting and auditing processes and the fund must maintain a copy of the charter. See id.

6 See Release No. 33-7754, supra note 1, at 12-13.

7 See Release No. 33-7754, supra note 1.

8 See id at 3.

proposals addressed the potential for abuses and conflicts of interest which may arise if directors of investment companies are not independent. The SEC noted that there needs to be "independent" directors to serve as "watchdogs" for investors and "supply an independent check on management."[9]

The proposed amendments to the 1940 Act, which followed an SEC sponsored round table,[10] fall into three categories as requirements for investment companies:

Category 1. *Conditions for Reliance on Certain Exemptive Rules under the 1940 Act*:

- Independent directors must constitute at least a majority of their board of directors.
- Independent directors must select and nominate other independent directors.
- Any legal counsel for independent directors must be independent legal counsel.

Category 2. *Other Rule Amendments Relating to Directors*:

- Prevent unnecessary disqualification of independent directors (Amending Rule 2a-19);
- Protect independent directors from the costs of legal disputes with fund management (Amending Rule 17d-1(d)(7));
- Permit the SEC to monitor the independence of directors by requiring funds to keep records of their assessments of director independence;
- Temporarily suspend the independent director minimum percentage requirements if a fund falls below a required percentage due to an independent director's death or resignation; and
- Exempt funds from the requirement that shareholders ratify or reject the directors' selection of an independent public accountant, if the fund establishes an audit committee composed entirely of independent directors.

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9 See id at 4.

10 In February 1999, the SEC held a two-day public Round table discussion on the role of independent directors of mutual funds. Participants in the Round table included independent directors, investor advocates, executives of fund advisers, academics, corporate governance experts, and legal counsel. See Transcripts from the Round Table on the Role of Independent Investment Company Directors, February 23-24, 1999. The Round table transcripts are available to the public in the Commission's public reference room and the Commission's Louis Loss Library. They also are available on the Commission's Internet web site: http://www.sec.gov/offices/invmgmt/roundtab.htm.

Category 3. *Changes Designed to Provide Better Information to Investors Concerning the Directors of Their Funds:*

? Provide better disclosure about directors, including:

(1) basic information about the identity and business experience of directors (including disclosure describing the relationship, events, or transactions that make a director "interested");

(2) fund shares owned by directors;

(3) information about directors' potential conflicts of interest; and

(4) the board's role in governing the fund's operations (including requiring disclosure of the factors and conclusions that formed the basis for the board's approval of the existing investment advisory contract).

B. Category 1 Proposals

Currently, a large number of funds rely on exemptive rules under the 1940 Act that require fund boards to approve and oversee activities that involve potential conflicts of interest. The proposed rule amendments would require that funds relying on any of ten commonly used exemptive rules meet the following conditions designed to enhance director independence and effectiveness:

? **Independent Directors as a Majority of the Board**

The SEC believes that a fund board comprised of a majority of independent directors can better perform its responsibilities of monitoring potential conflicts of interests and protecting the fund and its shareholders. The SEC therefore proposed that a fund's independent directors comprise at least a majority of the board of directors.

? **Selection and Nomination of Independent Directors**

Given the importance of independent directors, the SEC proposed that incumbent independent directors should select and nominate new independent directors.[11] If the independent director is selected and nominated by other independent directors, rather than by the fund's adviser, the SEC believes that the independent director is more likely to have their primary loyalty to shareholders rather than the adviser.

[11] See Release No. 33-7754, supra note 1, at 8. Funds that have adopted distribution plans under rule 12b-1 would be unaffected by this proposal since rule 12b-1 already contains this requirement.

? **Independent Legal Counsel**

The SEC believes that an additional way in which the independence and effectiveness of independent directors can be enhanced is to have independent counsel.[12] The SEC believes that counsel which represents only the independent directors and not both the independent directors and the adviser is better able to provide zealous representation of independent directors.[13] Therefore, the SEC proposed to require that counsel for a fund's independent directors not also act as counsel to the fund's adviser, principal underwriter, or administrator (or their control persons). A person would be an "independent legal counsel" if the directors reasonably believe the person and his law firm, partners, and associates have not acted as legal counsel for the fund's investment adviser, principal underwriter, administrator or any of their control persons at any time since the beginning of the fund's last two completed fiscal years.[14]

C. Category 2 Proposals

Other proposed rule amendments relating to fund directors are as follows:

? **Limits on Coverage of Directors under Joint Insurance Policies**

Funds typically purchase "errors and omissions" insurance policies ("D&O/E&O policies") to cover expenses incurred by directors and officers during litigation. Rule 17d-1(d)(7) of the 1940 Act permits the purchase of such joint policies. However, historically, these policies have excluded claims in which the parties under the policy sue each other, such as where an adviser and the directors are covered under the same policy. Therefore, in order to protect the interests of independent directors, the SEC proposed to permit joint liability insurance policies that do not exclude coverage for litigation between the independent directors and the fund's adviser.

? **Exemption from Ratification of Independent Public Accountant Requirement for Funds with Independent Audit Committees**

Under the 1940 Act, shareholders must ratify or reject the selection of the fund's independent auditors by the independent directors. However, the SEC believes that shareholders rarely contest votes over the ratification of the selection of a fund's independent accountant.[15] Therefore, the SEC proposed to exempt funds from the shareholder ratification requirement if the

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[12] See id. at 9.

[13] Id.

[14] Id. at 10. A fund could form a reasonable belief based on a representation from counsel. The proposed definition of "independent legal counsel" includes an exception that would permit the independent directors to retain the counsel if they determine that the counsel's representation was "so limited that it would not adversely affect the counsel's ability to provide impartial, objective, and unbiased legal counsel to the independent directors. " Id. at 11.

[15] Id. at 12.

auditor is subject to the oversight and direction of an audit committee consisting entirely of independent directors. In order for a fund to rely on the proposed exemption, three requirements must be met: (1) the audit committee must be responsible for overseeing the fund's accounting and auditing processes, (2) the fund's board of directors must adopt an audit committee charter describing the committee's structure, duties, powers, and methods of operation, and (3) the fund must maintain a copy of the charter.[16] The SEC acknowledged that the proposed rule assumes that the appropriate form for the instrument governing an audit committee is a charter.[17]

? **Qualification as an Independent Director**

In order to enhance the independence of fund boards, the SEC proposed amendments to prevent qualified individuals from becoming unnecessarily disqualified from serving as an independent director. The SEC proposed to (a) amend the rule that permits directors to be considered independent directors even if they are affiliated with a broker-dealer provided that no more than one-half of a fund's independent directors may be broker-dealers or their affiliates, and (b) adopt a new rule to prevent directors from being disqualified as independent directors solely because they own shares of index funds that hold limited interests in their fund's adviser or principal underwriter, as long as the value of securities issued by the adviser or underwriter (or controlling person) does not exceed five percent of the value of any index tracked by the index fund.[18]

D. Category 3 Proposals

The third category of rule proposals concerns disclosure requirements about fund directors:

? **Disclosure of Information about Fund Directors**

The SEC believes that shareholders have a significant interest in knowing who the independent directors are, whether the independent directors' interests are aligned with the shareholders' interests, whether the independent directors have any conflicts of interest, and how the directors govern the fund.[19] The SEC proposed to supplement currently required disclosure provided to shareholders through proxy materials and statements of additional information by requiring mutual funds to:

? Provide the basic information about directors to shareholders annually so that shareholders will know the identity and experience of their representatives;

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16 Id. at 13.

17 Id.

18 Id. at 13-14.

19 Id. at 15.

- Disclose to shareholders fund shares owned by directors to help shareholders evaluate whether directors' interests are aligned with their own;

- Disclose to shareholders information about directors that may raise conflicts of interest concerns; and

- Provide information to shareholders on the board's role in governing the fund.[20]

The SEC proposed to require three types of circumstances that could raise potential conflicts of interest between mutual fund directors and their shareholders: positions, interests, and transactions and relationships of directors.[21] For example, the SEC proposed to require disclosure of a directors' securities holdings in entities related to the fund based upon the belief that such a director may be tempted to place his financial interest in the entity ahead of shareholders' interests in the fund.

The SEC also proposed to require the same disclosure requirements for immediate family members of directors because the involvement of family members with the fund or persons related to the fund could raise similar conflicts of interest issues as the director.[22] Similarly, the SEC proposed to require disclosure about circumstances involving directors, the fund and persons related to the fund.[23]

- **Board's Role in Fund Governance**

The SEC proposed to conform disclosure required under the proxy rules to the fund's Statement of Additional Information ("SAI") regarding matters related to the board's role in governing a fund. The proxy rules currently require a mutual fund to disclose in reasonable detail the material factors and conclusions surrounding the board of directors' recommendation that the shareholders approve an investment advisory contract, including a discussion of any benefits derived or to be derived by the investment adviser from the relationship with the fund.[24] The SEC proposed to require similar information in the SAI so that investors will be able to evaluate the board's basis for approving the renewal of an existing investment advisory

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[20] Id. at 16. Basic information about directors would be disclosed in a table. This table would be required in the fund's annual report to shareholders, the Statement of Additional Information, and proxy statement for the election of directors. Id.

[21] Id. at 19.

[22] Id. at 20.

[23] Id.

[24] Item 22(c)(11) of Schedule 14A.

contract.[25] The SEC also proposed to require mutual funds to identify each standing committee of the board in the SAI and proxy statements for the election of directors.[26]

? **Separate Disclosure**

The SEC proposed to require funds to present disclosure for independent directors separately from disclosure for interested directors in the SAI, proxy statement for the election of directors, and annual reports to shareholders.[27]

III. PROPOSED RULES REGARDING AUDITOR INDEPENDENCE

A. Introduction

In June 2000, the SEC issued proposed rules regarding auditor independence requirements.[28] The SEC believes that an investor relies heavily on the accuracy of an issuers' financial statements in making a decision whether to invest in the issuers' securities. Since auditors review these financial statements as required under federal securities laws and issue an opinion stating that the financial statements fairly reflect the financial position of the company,[29] the SEC believes that this review carries little weight to investors unless the auditors are independent of the issuer. The SEC stated that if an investor does not believe that an auditor is truly independent from the issuer, that investor will be less likely to invest in the issuer's securities because they will have little confidence in the auditor's opinion and review of the financial statements.[30] It is a goal of the SEC to promote investor confidence in the reliability and integrity of issuers' financial statements by ensuring that auditor independence requirements remain "relevant, effective, and fair."[31]

The SEC believes it is necessary to revise rules regarding auditor independence because important developments have occurred during the last 17 years[32] which require revision of the rules. For example, the SEC stated that firms are becoming primarily business advisory service firms as the firms increase the number, revenues from, and types of non-audit services provided

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[25] See Release No. 33-7754, supra note 1, at 25.

[26] Id.

[27] Id. Currently, mutual funds are required to indicate with an asterisk the directors who are interested persons of the fund within the meaning of section 2(a)(19) of the 1940 Act.

[28] See Proposing Release, supra note 2.

[29] The auditors issue an "unqualified opinion" which states that the financial statements present fairly, in all material respects, the financial position, results of operations, and cash flows of the entity in conformity with generally accepted accounting principles. AICPA SAS No. 58, AU §508.10.

[30] See Proposing Release, supra note 2, at 2.

[31] Id.

[32] The SEC last amended auditor independence requirements in 1983.

to audit clients and that firms and their audit clients are entering into an increasing number of business relationships, such as strategic alliances, co-marketing arrangements, and joint ventures.[33] It is developments such as these that the SEC considered in creating its proposed rules regarding auditor independence.

In determining what constitutes "independence," the proposals focus on those who can influence a particular audit. The proposals articulated four principles that govern the determination of whether an accountant is independent of its audit client. Specifically, an accountant is *not* independent whenever, during the audit and professional engagement period, the accountant: (i) has a mutual or conflicting interest with the audit client, (ii) audits the accountant's own work, (iii) functions as management or an employee of the audit client, or (iv) acts as an advocate for the audit client.[34]

The proposals also described certain relationships that impair an auditor's independence, such as the financial and employment relationships between auditors or their family members and audit clients, and relationships between auditors and audit clients where the auditors provide certain non-audit services to their audit clients. For example, an accounting firm would not be independent from an audit client to which the firm provides valuation and appraisal services.[35] The proposals required companies to disclose in their annual proxy statements information about the non-audit services provided by their auditors and the participation of leased personnel in performing the company's annual audit.

B. "Independence"

1. Accountant's View

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[33] See Proposing Release, supra note 2, at 2. In addition, the SEC noted the following developments:

- firms are divesting significant portions of their consulting practices or restructuring their organizations;
- firms are offering ownership of parts of their practices to the public, including audit clients;
- firms are in need of increased capital to finance the growth of consulting practices, new technology, training, and large unfunded pension obligations;
- firms have merged, resulting in increased firm size, both domestically and internationally;
- firms have expanded into international networks, affiliating and marketing under a common name;
- non-CPA financial service firms have acquired accounting firms, and the acquirors previously have not been subject to the profession's independence, auditing, or quality control standards;
- firms' professional staffs have become more mobile, and geographically location has become less important due to advances in telecommunications and Internet services; and
- audit clients are hiring an increasing number of firm partners, professional staff, and their spouses for high level management positions.

[34] See Proposing Release, supra note 2, at 3.

[35] The reasoning behind the auditing firm not being independent is that the auditor may have participated actively in developing asset values reported in the financial statements and would therefore be auditing their own work, creating a conflict of interest.

A requirement imposed upon all auditors upon their review of a company's financial statements and in their profession generally is the independence of state of mind, or "mental attitude": "In all matters relating to the assignment, an independence in mental attitude is to be maintained by the auditor ... he must be without bias with respect to the client."[36]

2. SEC's View: Fact and Appearance.

The SEC believes that in order for an auditor to effectively perform his/her job in the financial industry, the auditor must have willingness and freedom to decide issues in an unbiased and objective manner, even when the auditor's decisions may be against the interests of management of an audit client.[37] The SEC stated that the accounting profession requires independence in both fact and appearance; one cannot exist without the other. Independent auditors should avoid situations that would lead outsiders to doubt their independence. "It is not enough that financial statements be accurate; the public must also perceive them as being accurate."[38]

The SEC stated that auditor independence involves assumptions about human behavior that cannot be easily verified. It is easy to describe conflicts of interest, but difficult to determine the impact of the conflict on the auditor's objectivity because "objectivity" is a state of mind.[39] Determining an auditor's independence becomes an objective standard: Can a reasonable person, knowing all relevant circumstances, perceive that an auditor is independent? In drafting the proposed rules, the SEC attempted to identify and address influences imposed on an auditor that could reasonably be expected to cause an auditor to lose his/her objectivity or that cause reasonable persons to perceive the auditor as not being independent.

C. Results of Studies

The SEC quoted numerous studies regarding the public and private sector's perception of auditors' independence, particularly with respect to non-audit services for audit clients.[40] The studies relayed a concern that non-audit services to audit clients may compromise the objectivity or independence of the auditor by "diverting firm leadership away from the public responsibility

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[36] AICPA SAS No. 1, AU §220.01-02.

[37] See Proposing Release, supra note 2, at 5.

[38] Id. at 6.

[39] The SEC quoted Article IV of the AICPA's Code of Professional Conduct: "Objectivity is a state of mind, a quality that lends value to a member's services. It is a distinguishing feature of the profession. The principle of objectivity imposes the obligation to be impartial, intellectually honest, and free of conflicts of interest. Independence precludes relationships that may appear to impair a member's objectivity in rendering attestation services." AICPA Code of Professional Conduct, ET §55.01.

[40] The SEC quoted: Staff Report on Auditor Independence (Mar. 1994) ("Staff Report"); GAO, THE ACCOUNTING PROFESSION - Major Issues: Progress and Concerns, (GAO/AIMD-96-98, Sept. 1996); Special Committee on Financial Reporting, AICPA, Improving Business Reporting--A Customer Focus: Meeting the Information Needs to Investors and Creditors (1994) ("AICPA Special Committee Report").

associated with the independent audit function, by allocating disproportionate resources to other lines of business within the firm, and by seeing the audit function as necessary just to get the benefit of being considered objective and to serve as an entree to sell other services ...."[41] The SEC noted that studies have indicated that "users of financial statements" are concerned that non-audit service relationships may "erode auditor independence" by, for example, attempting to create more profitable consulting engagements at the expense of the audit relationship.[42] Examples of non-audit services are: pension, financial, administrative, sales, data processing, and marketing functions.

D. Affect of Non-Audit Services on Auditor Independence

The SEC believes that non-audit services may alter the relationships between auditors and their audit clients in two different ways: (1) auditors become more vulnerable to economic pressures from audit clients as the percentage of business from auditing decreases, and (2) certain non-audit services, by their nature, raise independence issues.[43]

If the auditor is providing various services to an audit client, it becomes more difficult for that auditor to remain objective and not "give in" to the client. The auditor may become more concerned with satisfying the client than with ensuring the integrity of financial statements. The SEC stated that common sense dictates that a person's decision changes when that person has a stake in the outcome; however, the SEC noted that it is impossible to observe an auditor's state of mind or know whether an auditor's mind is "objective." The SEC also noted that it is difficult, if not impossible, to measure the impact a particular financial arrangement has on the auditor's state of mind or whether an auditor made an error in judgment. The SEC noted that it is evident that investor confidence is affected by impairments on an auditor's independence and therefore, the SEC must act to protect such confidence.

After considering a complete ban against audit firms offering non-audit services to audit clients, the SEC instead proposed establishing basic principles for evaluating the impact of the non-audit service on the auditor's independence, and identifying specific services that impair that independence. The SEC's goal was to preclude non-audit services only to the extent necessary to protect the integrity and independence of the audit function.

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[41] Advisory Panel on Auditor Independence, Report to the Public Oversight Board of the SEC Practice Session, AICPA: Strengthening the Professionalism of the Independent Auditor, at 9 (Sept. 13, 1994).

[42] See AICPA Special Committee Report, supra note 40.

[43] The SEC noted as an example, that auditor independence concerns arise when a company hires its audit firm to perform valuations of in-process research and development. See Proposing Release, supra note 2, at 11. The SEC stated that a "mutuality of interest" develops which makes the auditor a "consultant" accountable to management as opposed to an auditor who is accountable to the public. Id.

E. Rule Proposals Summarized

Currently, Rule 2-01 of Regulation S-X describes circumstances when the accountant is not considered independent.[44] The following are proposed changes to Rule 2-01:

1. Proposed Rule 2-01(b): The "Independence" Test

An accountant is not independent with respect to an audit client if that accountant is not, or would not be, perceived by reasonable investors to be capable of exercising objective and impartial judgment on all issues encompassed within the auditor's engagement. The SEC developed four basic principles to be applied using a "reasonable investor" standard when making a determination as to independence of the accountant. These four principles are as follows:

> Reasonable investors would agree that an auditor's independence is impaired when the auditor:
>
> - has a mutual or conflicting interest with the audit client,
> - audits the accountant's own work,
> - functions as management or an employee of the audit client, or
> - acts as an advocate for the audit client.

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[44] Rule 2-01 states:

(a) The Commission will not recognize any person as a certified public accountant who is not duly registered and in good standing as such under the laws of the place of his residence or principal office. The Commission will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of the place of his residence or principal office.

(b) The Commission will not recognize any certified public accountant or public accountant as independent who is not in fact independent. For example, an accountant will be considered not independent with respect to any person or any of its parents, its subsidiaries, or other affiliates (1) in which, during the period of his professional engagement to examine the financial statements being reported on or at the date of his report, he, his firm, or a member of his firm had, or was committed to acquire, any direct financial interest or any material indirect financial interest; (2) with which, during the period of his professional engagement to examine the financial statements being reported on, at the date of his report or during the period covered by the financial statements, he, his firm, or a member of his firm was connected as a promoter, underwriter, voting trustee, director, officer, or employee. A firm's independence will not be deemed to be affected adversely where a former officer or employee of a particular person is employed by or becomes a partner, shareholder or other principal in the firm and such individual has completely disassociated himself from the person and its affiliates and does not participate in auditing financial statements of the person or its affiliates covering any period of his employment by the person. For the purposes of §210.2-01(b), the term "member" means (i) all partners, shareholders, and other principals in the firm, (ii) any professional employee involved in providing any professional service to the person, its parents, subsidiaries, or other affiliates, and (iii) any professional employee having managerial responsibilities and located in the engagement office or other office of the firm which participates in a significant portion of the audit.

(c) In determining whether an accountant may in fact be not independent with respect to a particular person, the Commission will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant and that person or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of reports with the Commission.

2. Proposed Rule 2-01(c)

An accountant is not independent under the standard of paragraph (b) described above if, during the audit and professional engagement period, the accountant has any of the financial, employment or business relationships with, provides certain non-audit services to, or receives a contingent fee from, the accountant's audit client or an affiliate of the audit client, or otherwise does not comply with the standard of paragraph (b).[45]

a. *Financial, Employment and Business Relationships*

The rule proposals regarding financial interests stem from the SEC's belief that a direct or material indirect financial interest in an audit client will impair an auditor's independence with respect to that audit client. For example, an accountant will not be independent of the audit client where a debtor-creditor relationship is created or there is other commingling of financial interests of the auditor and the audit client.[46]

The rule proposals regarding employment relationships are based on the premise that when an accountant is either employed by an audit client, or has a close relative or former colleague employed in certain positions at an audit client, the accountant might not be capable of exercising the objective and impartial judgment needed to establish independence.[47] The general standard is that an accountant is not independent if the accountant has an employment relationship with an audit client or an affiliate of an audit client.

The proposals stated also that an auditor's independence with respect to an audit client is impaired when the accounting firm, or a covered person in the firm, has a direct or material

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[45] The SEC noted that accountants may have to take steps to remain independent even if the steps are not specified in proposed rule 2-01. See Proposing Release, supra note 2, at 16. The SEC admitted that it cannot foresee every circumstance that may affect an auditor's decision. The SEC encouraged accountants to apply the reasonable standard themselves and recuse themselves from any review, audit, or attest engagement if reasonable investors would view the accountant's ability to exercise objective and impartial judgment as compromised by any personal, financial, or business relationship. See id. at 17.

The SEC noted that the use of the word "during" in "during the audit and professional engagement period" makes clear that an accountant will not be independent if the accountant acquires a financial interest in the audit client during the process regardless of the fact that the accountant was "independent" at the outset.

[46] See Proposed Rule 2-01(c)(1)(i) and (ii). An accountant is not independent with respect to an audit client if the accounting firm, any covered person in the firm, or any immediate family member of any covered person has any direct investment in the audit client or in an affiliate of the audit client. A direct investment in an affiliate of an audit client is treated the same as an investment in the audit client. The SEC provided two limited exceptions to the financial relationship rules. First, when there is a gift or inheritance from a third party, and second, when the accounting firm takes on an new audit client and the accountant lacks independence due to events beyond the accountant's control. See Proposed Rule 2-01(c)(1)(iii).

[47] See Proposed Rule 2-01(c)(2) for the employment relationships that impair an auditor's independence.

indirect business relationship with an audit client, an affiliate of an audit client, or either of their officers, directors, or shareholders holding 5% or more of the audit client's equity securities.[48]

b. *Non-Audit Services*[49]

The SEC addressed the issue of non-audit services and their impact on the auditor's independence due to an increase in the portion of firm revenues derived from non-audit services provided to audit clients. The SEC believes that an accountant who provides non-audit services to an audit client may not be independent of that audit client due to influences by the audit client and/or the inability of the accountant to remain objective and impartial when reviewing financial statements. The SEC believes that certain services are incompatible with the principles of "independence" set forth in the proposed rules[50] even when the audit client, by contract or otherwise, accepts ultimate responsibility for the work performed or for any decision made. For example, an accountant is not independent if the accountant designs or implements a hardware or software system that is or will be used to generate information that is significant to the audit client's financial statements taken as a whole.[51] Although in the proposed rules the SEC listed certain services the SEC believes impairs an auditor's independence, the SEC stated in its proposal that it is considering prohibiting auditors from providing *any* audit service to audit clients in order to protect the integrity of the auditor's independence.[52]

c. *Contingent Fees*[53]

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[48] See Proposed Rule 2-01(c)(3). The SEC provided that an accountant's independence is not impaired solely because of the business relationship with the audit client. For example, the SEC stated that if the accountant is acting as a "consumer in the ordinary course of business, " that would not impair its independence. See Proposing Release, supra note 2, at 31. If the accountant buys "routine" products or services on the same terms and conditions as other consumers, then the accountant is acting as a "consumer." However, if the accountant resells the client's products or services, then the accountant has impaired its independence because it is not acting as a "consumer." See id. Similarly, a purchase is not "in the ordinary course of business" nor is the product "routine" if it is significant to the firm or its employees. See id.

[49] Proposed Rule 2-01(c)(4).

[50] Specifically, Proposed Rule 2-01(b).

[51] The SEC believes that designing or implementing systems affecting the financial statements may create a mutual interest between the client and the accountant in the system's success and result in the accountant auditing his or her own work. See Proposing Release, supra note 2, at 33.

[52] See Proposing Release, supra note 2, at 41. The SEC also considered whether the independence problems created by offering non-audit services to audit clients can be avoided by structuring a firm to segregate its audit and non-audit businesses into separate autonomous units. See id. In order to allow firms time to implement the new rules, the SEC proposed that for two years following the effective date of the rule, the accountant would not impair its independence for providing non-audit services to an audit client or an affiliate of an audit client if: (a) the non-audit services are performed pursuant to a written contract in effect on or before the effective date of this rule; and (b) performing those services would not impair the auditor's independence under pre-existing requirements of the SEC, the Independence Standards Board, or the U.S. accounting profession. See id.

[53] See Proposed Rule 2-01(c)(5).

An accountant is not independent if the accountant provides any service to an audit client or an affiliate of an audit client for a contingent fee, or receives a contingent fee from an audit client or an affiliate of an audit client.

The SEC believes that contingent fee arrangements will typically result in the auditor having a mutual interest with the client. The SEC stated that "mutuality of interest could influence the auditor's conduct of the audit."[54]

d. *Quality Controls*[55]

The SEC provided a limited exception to compliance with proposed "independence" rules for accounting firms that have appropriate quality controls and meet other conditions. The SEC provided this exception in an attempt to encourage accounting firms to adopt internal quality controls that ensure the independence of the firm's auditors. For example, the firm must have written independence policies and procedures, automated systems to identify potential conflicts, internal training, inspection and testing.

e. *"All Relevant Circumstances"*[56]

The SEC stated that when making independence determinations, they will consider "all relevant circumstances," including all relationships between the accountant and the audit client or its affiliates.

f. *Proxy Disclosure*

The SEC proposed to require companies to include in their proxy statements certain disclosures about non-audit services provided by their auditors during the last fiscal year.[57] The SEC believes that investors will be aided by this disclosure and needs the information to make a judgment about the auditor's independence. Unlike earlier proxy disclosure requirements, the SEC's current proposal requires companies to disclose the fee paid for each non-audit service and the aggregate fee for the most recent fiscal year. A company would also have to disclose if its principal auditor leased or otherwise acquired from another entity the personnel it needed to perform a majority of the audit of the company's financial statements.

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[54] See Proposing Release, supra note 2, at 44.

[55] Proposed Rule 2-01(d)(3)(i)-(vii) describe the elements of a quality control system that large accounting firms that audit public companies must have in place to qualify for the limited exception.

[56] See Proposed Rule 2-01(e).

[57] The SEC previously required such disclosure but eliminated the requirement because the number of accounting firms offering non-audit services and the percentage of non-audit services offered was not to a degree to cause concern for investors. See Staff Report, supra note 40.

IV. OTHER INITIATIVES

As noted briefly above, in addition to the two recent initiatives proposed by the SEC, other developments in the industry have passed regulations governing the independence issue. The NYSE, the National Association of Securities Dealers ("NASD") and a "blue ribbon" panel of industry leaders have recommended best practices for corporate audit committees, and the NYSE, in response to those recommendations, has adopted new audit committee rules to better ensure the independence of audit committee members.[58]

The reforms proposed by the NYSE, NASD, and the blue ribbon panel recommended strengthening corporate audit committees to improve the quality of corporate financial reporting. The proposals initiated from a concern at the SEC about earnings management and the use of manipulative accounting practices to smooth earnings or meet financial analyst forecasts. Ensuring the independence of the audit committee was one goal of the proposals. One of the recommendations was that the NYSE and NASD should adopt a definition of "independence" for audit committee members of listed companies with a market capitalization above $200 million, which the NYSE has done, as discussed below.[59] The recommendations also provided examples of relationships which would disqualify a director from being independent, most of which the NYSE adopted.[60] In addition, the proposals recommended that all audit committee members be independent, audit committees should be comprised of at least three directors, all of whom are financially literate, each listed company must adopt a formal written audit committee charter, and the SEC should require that the audit committee of each reporting company disclose in their proxy statement whether the company has adopted an audit committee charter and if the committee has fulfilled its responsibilities under the charter.[61] Some of these recommendations were adopted by the NYSE in the new audit committee rules.

The NYSE's new audit committee rules require companies to submit written affirmations listing the members of the audit committee,[62] stating that the Board of Directors has determined that all members of the audit committee are independent, meaning that the members "have no

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[58] These new rules were approved by the SEC and are available in the NYSE's Listed Company Manual ("Listed Company Manual") which is available on the NYSE's website: www.nyse.com.

[59] See infra text accompanying note 63. Companies with a market capitalization below $200 million would remain subject to the then current definition of independence under NYSE and NASD rules: a director must not be an officer or employee of the company or have a relationship that would interfere with independent judgment. Affiliates are also disqualified under NYSE rules.

[60] See infra note 65 and accompanying text.

[61] Other proposals included that the NYSE and NASD listing rules should require an outside auditor to be ultimately responsible to the board and the audit committee and that the audit committee has the ultimate authority to select, evaluate, and replace the outside auditor, the audit committee is responsible for identifying and monitoring all relationships between the outside auditor and the company, the outside auditor should discuss the quality of financial reporting, all reporting companies should provide an audit committee letter to shareholders in the Form 10-K annual report, and outside auditor's should review interim reports.

[62] Section 303 of the NYSE's Listed Company Manual requires an audit committee to consist of at least three directors, all of whom must meet certain requirements.

relationship to the Company that may interfere with the exercise of their independence from management and the Company," and that the Board of Directors has adopted and approved a formal written audit committee charter.[63] The NYSE provided a list of certain relationships which would disqualify an individual from being considered independent and therefore unable to serve on the audit committee.[64] For example, a director who is an employee of the company or any of its affiliates may not serve as a member of the audit committee until three years following the termination of employment. Certain other business relationships, links to compensation committees or immediate family member relationships also prohibit an individual from serving on the audit committee.[65]

The NYSE also required determination of independence to be discussed in the audit committee charter. The charter must specify that the audit committee will ensure that the outside auditor will periodically submit to the audit committee a formal written statement describing all relationships between the auditor and the company and that the audit committee will actively engage in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the outside auditor's objectivity and independence with the audit committee recommending that the Board of Directors take any appropriate action to ensure that the outside auditors remain independent.[66]

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[63] The written affirmation submitted by the Company to the NYSE also must state that the Board has determined that each audit committee member is financially literate and that one or more audit committee members possess accounting or related financial management expertise.

[64] See Listed Company Manual, supra note 58, at Sec. 303.01(B)(3).

[65] Other examples of restrictions applying to serving as an audit committee member: A director who is a partner, controlling shareholder, or executive officer of an organization that has a business relationship with the company may serve on the audit committee only if the company's Board of Directors determines in its business judgment that the relationship does not interfere with the director's exercise of independent judgment (see Listed Company Manual, supra note 58, at Sec. 303.01(B)(3)(b)); a director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee may not serve on the audit committee (see Listed Company Manual, supra note 58, at Sec. 303.01(B)(3)(c)); and a director who is an immediate family member of an individual who is an executive officer of the company or any of its affiliates may not serve on the audit committee until three years following termination of the employment relationship (see Listed Company Manual, supra note 58, at Sec. 303.01(B)(3)(d)). See the full text of Sec. 303.01(B)(3) for a full discussion of the restrictions applying to serving as an audit committee member.

[66] See Listed Company Manual, supra note 58, at Sec. 303.01(B)(1)(c).