

Capital Markets and Securities

A bulletin prepared by the Capital Markets Group at Vedder Price designed to keep corporate executives and investment banking professionals informed of major developments in the securities industry.

Spring 2004

NEW OBLIGATIONS – 2004 PROXY SEASON NYSE AND NASDAQ LISTED COMPANIES

The 2004 proxy season brings with it the need to comply with new SEC and stock exchange rules adopted in response to the Sarbanes-Oxley Act of 2002. Enclosed is a brief table highlighting these new rules and related disclosure obligations. The new NYSE and Nasdaq corporate governance rules are effective as of the earlier of (i) a company's first annual meeting after January 15, 2004 or (ii) October 15, 2004. Accordingly, companies will need to be in compliance with the substantive requirements of those rules at the time of their 2004 annual meetings.

The NYSE has indicated that the new proxy statement and annual report disclosures required by the revised rules do not technically apply to documents filed with the SEC before the effective date of the corporate governance rules. Nonetheless, NYSE-listed companies should consider the spirit of the new corporate governance rules and best corporate governance practices in deciding whether to include the new disclosure items in their proxy statements and annual reports. Nasdaq has taken the position, however, that Nasdaq-listed companies are generally required to comply with the new disclosure requirements in their upcoming proxy statements and annual reports.

For additional information concerning the new NYSE and Nasdaq corporate governance rules, please refer to our Winter 2004 Capital Markets and Securities bulletin.

Subject	New Requirements for NYSE Listed Companies	New Requirements for Nasdaq Listed Companies
<i>Board Independence:</i>	<p>Board Composition: Boards must comply with new NYSE independence standards. [NYSE Rule 303A.02]¹</p>	<p>Board Composition: Boards must comply with new Nasdaq independence standards. [NASD Rule 4200(a)(15)]²</p>
	<p>Proxy Statement: A company must disclose the basis for its determination whether a director is independent. If a company adopts categorical standards for making that determination, the company must disclose those standards and identify those directors who comply with the standards. If a director who has a business or other relationship that does not fit within the company's categorical standards is deemed independent or a company has no categorical standards, the basis for each individual determination of independence must be disclosed. [NYSE Rule 303A.02 (a) commentary]</p> <p>Contributions made by the company to any charity exceeding the greater of \$1 million or 2% of that charity's revenues if an independent director serves as an executive officer of that charity must be disclosed. [NYSE Rule 303A.02(b)(v) commentary]³</p>	<p>Proxy Statement: Directors determined to be independent by the board of directors must be identified. [NASD Rule 4350(c)(1)]</p> <p>NOT REQUIRED</p>
<i>Executive Sessions:</i>	<p>Executive sessions of non-management directors must be convened at least once a year. If non-management directors include any directors who are not deemed "independent," companies should schedule an executive session at least once a year that includes only independent non-management directors. [NYSE Rule 303A and commentary]</p>	<p>Regularly scheduled executive sessions of independent directors are required to occur at least twice a year. [NASD Rules 4350(c)(2)]</p>
	<p>Proxy Statement: If a particular director is chosen to preside at all executive sessions of non-management directors, a company must disclose his or her identity. Alternatively, a company may disclose the procedure by which a presiding director is chosen for each executive session. In either case, companies must disclose the method by which individuals can communicate directly with non-management directors. [NYSE Rule 303A.03 commentary]</p>	<p>NOT REQUIRED</p>

¹ The three-year "look back" provisions of the new NYSE board independence rules will begin to apply only from and after November 4, 2004. Until that time, NYSE-listed companies should apply a one-year "look back" for determining independence.

² Unlike the new NYSE independence standards, the Nasdaq rules do not provide a phase-in period before the three-year "look back" applies.

³ Based on commentary to the rule, if a company discloses contributions to a charity in which a director is an executive officer that exceeded in any of preceding three fiscal years the greater of \$1 million or 2% of such charity's consolidated gross revenues, that director will not be precluded from being deemed "independent" under the NYSE rules.

Subject	New Requirements for NYSE Listed Companies	New Requirements for Nasdaq Listed Companies
<i>Nominating/Corporate Governance Committee:</i>	Website: The committee charter must be posted on the company's website. [NYSE Rule 303A.09 commentary]	Each company must have a written charter or board resolution addressing the nominations process.
	<p>10-K/Proxy Statement: Must disclose in 10-K that the committee charter is available on the company's website and is available in print to anyone who requests it. [NYSE Rule 303A.09 commentary]</p> <p>Must disclose in proxy statement policies and procedures for director nominations (including shareholder candidates) and whether the committee charter is available on the company's website and provide website address. If not available on the company's website, file once every three years with proxy statement. [Item 7(d) Schedule 14A]</p>	<p>Proxy Statement: If the company does not have a nominating committee, it must state the reasons why and identify each director who participates in consideration of director nominees. [Item 7(d) Schedule 14A]</p> <p>SAME AS NYSE - SEC REQUIREMENT</p>
<i>Corporate Governance Guidelines:</i>	Website: The guidelines must be posted on the company's website and printed copies must be made available to any requesting shareholder. [NYSE Rule 303A.09 commentary]	NOT REQUIRED
	10-K: Must disclose that the guidelines are available on the company's website and are available in print to anyone who requests it. [NYSE Rule 303A.09 commentary]	NOT REQUIRED
<i>Code of Ethics:</i>	Website: The code must be posted on the company's website. [NYSE Rule 303A.10]	The code must be filed with the company's Form 10-K, posted on the company's website or the company must undertake in the Form 10-K to make the code available without charge to anyone requesting a copy. [Item 406 Regulation S-K]
	<p>10-K: Must disclose whether the company has adopted a code of ethics that applies to its principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions. If the company has not adopted a code of ethics, it must explain why the company has not done so.</p> <p>A company must also indicate (as applicable) that (1) the code is available on the company's website and can be obtained in print and (2) any amendments to or waivers from the code will be promptly disclosed to shareholders by posting the information required by Item 10 of Form 8-K on its website. [Item 406 Regulation S-K]</p>	SAME AS NYSE - SEC REQUIREMENT

Subject	New Requirements for NYSE Listed Companies	New Requirements for Nasdaq Listed Companies
<i>Shareholder Access:</i>	Proxy Statement: Information concerning shareholder communications with directors must be disclosed. [Item 7(h) Schedule 14(a)]	SAME AS NYSE - SEC REQUIREMENT
<i>Compensation Committee:</i>	Website: The committee charter must be posted on the company's website. [NYSE Rule 303A.09]	NOT REQUIRED
	10-K: Must disclose that the committee charter is available on the company's website. [NYSE Rule 303A.09]	NOT REQUIRED
<i>Audit Committee Membership:</i>	Audit Committee Composition: SEC audit committee membership standards must be satisfied. [Exchange Act Rule 10A-3]	SAME AS NYSE - SEC REQUIREMENT
	Proxy Statement: Any determination by the board that an audit committee member is able to serve simultaneously on three or more public company audit committees without impairing his or her effectiveness must be disclosed. [NYSE Rule 303A.07(a) commentary]	NOT REQUIRED
	The identity and independence of audit committee members must be disclosed. [Item 401(i) Regulation S-K]	SAME AS NYSE - SEC REQUIREMENT
<i>Audit Committee Charter:</i>	Proxy Statement: The revised audit committee charter, if applicable, must be filed with the proxy statement and posted on the company's website. [Item 7(d) Schedule 14A; NYSE Rule 303A.09]	Proxy Statement: The revised audit committee charter, if applicable, must be filed with the proxy statement. [Item 7(d) Schedule 14A]
	10-K: Must disclose that the audit committee charter is available on the company's website and is available in print to anyone who requests it. [NYSE Rule 303A.09 commentary]	NOT REQUIRED

Subject	New Requirements for NYSE Listed Companies	New Requirements for Nasdaq Listed Companies
<i>Audit Committee Financial Expert:</i>	<p>10-K/Proxy Statement: Must disclose: (1) if the company has an audit committee financial expert (or if not, why not), (2) the identity of at least one audit committee financial expert by name and (3) whether that person is independent. [Item 401(k) Regulation S-K]</p>	SAME AS NYSE - SEC REQUIREMENT
	<p>If the financial expert determination is based on experience other than from position as a public accountant, principal financial officer, controller or principal accounting officer, the experience must be described.</p>	SAME AS NYSE - SEC REQUIREMENT
<i>Outside Auditors:</i>	<p>10-K/Proxy Statement: Must include new disclosure requirements concerning audit and non-audit fees paid to auditors. [Item 9(e) Schedule 14A; Item 14 Form 10-K]</p> <p>Audit committee's policies and procedures for approval of auditor engagements must be disclosed. [Item 9(e) Schedule 14A]</p>	SAME AS NYSE - SEC REQUIREMENT
<i>Certification as to Compliance with Corporate Governance Rules:</i>	<p>CEO must provide annual certification as to compliance with NYSE corporate governance rules. [NYSE Rule 303A.12(a)]</p>	<p>Company must provide Nasdaq with a completed "Corporate Governance Certification Form" (available on Nasdaq website) immediately following the next annual meeting after January 15, 2004 but no later than October 31, 2004.</p>
	<p>Disclosure must be included in the annual report to shareholders/10-K about the compliance certificate and the CEO/CFO certifications required to be filed with SEC reports. [NYSE Rule 303A.12(a) commentary]</p>	NOT APPLICABLE

Subject	New Requirements for NYSE Listed Companies	New Requirements for Nasdaq Listed Companies
Additional 10-K Disclosure Items:	Off-balance sheet arrangements and contractual obligations must be disclosed. [Item 303(a)(4) and (5) Regulation S-K]	SAME AS NYSE - SEC REQUIREMENT
	Must disclose critical accounting policies. [SEC Release Nos. 33-8350, 34-35321]	SAME AS NYSE - SEC REQUIREMENT
	All repurchases of equity securities by the company must be disclosed (i.e., total number of shares repurchased, average price paid per share, and number of shares repurchased as part of a publicly announced plan or program). [Item 703 Regulation S-K]	SAME AS NYSE - SEC REQUIREMENT
	Must include disclosure of non-GAAP financial information. [Regulation G; Item 10(h) Regulation S-K]	SAME AS NYSE - SEC REQUIREMENT

VEDDER, PRICE, KAUFMAN & KAMMHOLZ, P.C.

About Vedder Price

Vedder, Price, Kaufman & Kammholz, P.C. is a national, full-service law firm with more than 210 attorneys in Chicago, New York City and Livingston, New Jersey. The attorneys in the firm's Capital Markets Group regularly represent corporations and investment bankers, both foreign and domestic, in a wide variety of matters, including:

- debt and equity offerings, including initial public offerings, structured debt financings, aircraft securitizations, dual-class equity structures, and sophisticated preferred stock instruments;
- capital formation for initial capitalization, financing ongoing operations, and acquisitions;
- corporate disclosure, periodic reporting, proxy solicitations, and insider trading and beneficial ownership compliance matters;
- private placement of securities, including Rule 144A and Regulation S transactions;
- tender offers, mergers and acquisitions, and recapitalizations and restructurings;
- international offerings of securities and compliance by foreign issuers with U.S. securities laws;

- litigation and administrative and arbitration proceedings involving various securities fraud claims, disclosure issues, and regulatory enforcement matters; and
- municipal bond financings.

Principal Members of the Capital Markets Group:

Steven J. Gray (<i>Chair</i>)	312/609-7528
John T. Blatchford	312/609-7605
Thomas P. Desmond	312/609-7647
Christopher R. Elston	312/609-7595
Jennifer R. Evans	312/609-7686
Robyn B. Goldman	312/609-7662
Jennifer Durham King	312/609-7835
James W. Morrissey	312/609-7717
Meeghan O'Donnell	312/609-7529
Richard L. Williams III	312/609-7588
Jason K. Zachary	312/609-7757
Steven R. Berger (<i>New York</i>)	212/407-7714

Chicago
222 North LaSalle Street
Chicago, Illinois 60601
312/609-7500
Fax: 312/609-5005
Robert J. Stucker

New York
805 Third Avenue
New York, New York 10022
212/407-7700
Fax: 212/407-7799
Alan M. Koral

New Jersey
354 Eisenhower Parkway, Plaza II
Livingston, New Jersey 07039
973/597-1100
Fax: 973/597-9607
John E. Bradley