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Requirements for Public Company Boards

Including IPO Transition Rules

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Governance, Securities & Reporting Group

Weil

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INTRODUCTION

The following chart summarizes the requirements applicable to boards of directors of companies that have equity securities listed on the New York Stock Exchange (the "NYSE") or the Nasdaq Stock Market ("Nasdaq"). The sources of these requirements are:

- the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, as amended ("Dodd-Frank"),
- the Sarbanes-Oxley Act of 2002, as amended ("SOX"),
- the Clayton Antitrust Act of 1914, as amended (the "Clayton Act"),
- the Securities Exchange Act of 1934, as amended (the "Exchange Act"),
- rules of the U.S. Securities and Exchange Commission (the "SEC"), and
- the corporate governance listing standards of the NYSE and Nasdaq, which are in most respects very similar but not identical.

As noted in the chart, certain of these requirements do not apply to "foreign private issuers" ("FPIs"),[1] "controlled companies,"[2] "smaller reporting companies,"[3] companies in bankruptcy proceedings,[4] limited partnerships,[5] investment companies registered under the Investment Company Act of 1940, as amended (the "ICA"),[6] cooperatives and passive investment entities such as royalty trusts and securitization vehicles.

On December 11, 2024, the U.S. Court of Appeals for the Fifth Circuit, sitting en banc, vacated the SEC's approval of Nasdaq's board diversity-related requirements set forth in Nasdaq Listing Rules 5605(f) and 5606 (Alliance for Fair Board Recruitment v. SEC, No. 21-60626).[7] While there has been no appeal to date, nor is one anticipated at this time, companies should continue to review and take into account investment bank and institutional investor policies regarding board diversity requirements that may be applicable to companies pursuing an IPO as well as certain requirements under applicable state law.[8]

Note that the chart does not include state law requirements relating to director and committee independence, such as requirements imposed on banks and insurance companies.[9]

> Some of these requirements may be phased-in by newly listed public companies. For a summary of the transition rules, see "*IPO and Other Transitional Provisions: NYSE and Nasdaq*."

THE ROLE AND AUTHORITY OF INDEPENDENT DIRECTORS		
Requirement	**NYSE**	**NASDAQ**
Majority of Independent Directors	Independent directors must comprise majority of board.[10] *See "The Definition of 'Independent' Director."*	Same requirement.[11]
Cure	No specific cure provisions. NYSE's general procedures for listing standard violations apply. *See "Enforcement, Notifications and Affirmations."*	At least 180-day cure period for failure to comply due to a board vacancy or because a director is no longer independent for reasons beyond the director's reasonable control, and must notify Nasdaq immediately upon learning of non-compliance.[12] Eligibility to rely on cure period immediately following expiration of a phase-in period upon which the company was relying depends on compliance with majority independence requirement during phase-in period.[13] *See "Enforcement, Notifications and Affirmations."*
Executive Sessions	Non-management directors must meet in regularly scheduled executive sessions (without members of management present).[14] If these executive sessions include non-independent directors, an executive session with only independent directors must be scheduled at least once a year. Company may choose to hold regular sessions of independent directors only.[15]	Independent directors must meet regularly in executive session (without members of management present).[16] Executive sessions should occur at least twice a year.[17]
Presiding Directors	Non-management director must preside at executive sessions, although same director not required to preside at all executive sessions.[18] Name of director presiding at executive sessions, or procedure by which presiding director is selected for each executive session, must be disclosed on company's website or in proxy statement (or, if company does not file proxy statement, in company's annual report on Form 10-K), with information about how interested parties can communicate with presiding director or non-management directors as a group.[19]	Not addressed.
Exemptions	The following are not required to have a majority of independent directors or hold executive sessions: ▪ ICA-registered management investment companies; ▪ passive investment organizations in the form of trusts; ▪ listed derivatives and special purpose securities; and ▪ FPIs (*see "Applicability to Non-U.S. Companies"*).	The following are not required to have a majority of independent directors or hold executive sessions: ▪ limited partnerships; ▪ ICA-registered management investment companies; ▪ asset-backed issuers and other passive issuers; ▪ cooperatives; and

THE ROLE AND AUTHORITY OF INDEPENDENT DIRECTORS		
Requirement	**NYSE**	**NASDAQ**
	The following are not required to have a majority of independent directors but are required to hold executive sessions: ▪ controlled companies; ▪ limited partnerships; and ▪ companies in bankruptcy proceedings.[20]	▪ FPIs (*see "Applicability to Non-U.S. Companies"*). Controlled companies are not required to have a majority of independent directors but are required to hold executive sessions.[21]
Independent Committees	Subject to applicable exemptions, board must have: ▪ an independent audit committee;[22] ▪ an independent compensation committee;[23] and ▪ an independent nominating/corporate governance committee.[24]	Subject to applicable exemptions, board must have: ▪ an independent audit committee;[25] ▪ an independent compensation committee;[26] and ▪ director nominees selected or recommended for board's selection by independent nominating committee or by majority of the independent directors.[27]

THE DEFINITION OF "INDEPENDENT" DIRECTOR		
Requirement	**NYSE**	**NASDAQ**
Definition	"Independent director" is one who the board "affirmatively determines" has no "material relationship"[28] with company "either directly or as a partner, shareholder or officer of an organization that has a relationship with the company."[29] Definition applies for all purposes throughout NYSE listing standards. Additional restrictions or considerations apply to membership on the audit or compensation committee.	"Independent director" is one who is not an executive officer or employee of company,[30] and who, in the board's opinion, has no relationship which would "interfere with the exercise of independent judgment" in carrying out director responsibilities.[31] Definition applies for all purposes throughout Nasdaq listing standards. Additional restrictions or considerations apply to membership on the audit or compensation committee.
"Bright-line" Independence Disqualifications	▪ Director is, or has been within the last three years, an employee of company or an immediate family member[32] of director is, or has been within the last three years, an executive officer[33] of company;[34] ▪ Director has received, or has an immediate family member who is an executive officer of company and has received, during any twelve-month period within the last three years, more than $120,000 compensation directly from company (not including compensation received for director service, pension plan payments or deferred compensation for prior service not contingent on continued service);[35] ▪ Director or an immediate family member is a current partner of company's internal or external auditor; director is a current employee of the auditor; an immediate family member is a current employee of the auditor and personally works on company's audit; or director or an immediate family member was within the last three years a partner or employee of the auditor and personally worked on company's audit within that time; ▪ Director or an immediate family member is, or has been within the last three years, employed as an executive officer of another company where any of listed company's present executive officers at the same time serves or served on that company's compensation committee;[36] or	▪ Director is, or has been within the last three years, an employee of company, or a family member[40] is, or has been within the last three years, an executive officer[41] of company;[42] ▪ Director accepts or a family member who is an executive officer of company accepts more than $120,000 compensation[43] from company during any twelve-month period within the last three years (not including compensation received for director service, tax-qualified retirement plan payments or other non-discretionary compensation for prior services rendered);[44] ▪ Director or a family member is a current partner of company's outside auditor or was a partner or employee of company's outside auditor who worked on company's audit at any time during any of the past three years; ▪ Director or a family member is employed as an executive officer of another company where any of listed company's current executive officers during the past three years served on the compensation committee of such other company;[45] or ▪ Director or a family member is a partner in (but not a limited partner), or a controlling shareholder or an executive officer of an organization that has made to or

THE DEFINITION OF "INDEPENDENT" DIRECTOR		
Requirement	**NYSE**	**NASDAQ**
	▪ Director is a current employee,[37] or an immediate family member is a current executive officer, of an organization that has made to or received from the company payments for property or services in an amount which, in any of the last three fiscal years, exceeds greater of 2% of such other company's consolidated gross revenues or $1 million.[38] Charitable contributions not considered "payments" for purposes of this prohibition but contributions meeting these thresholds must be disclosed on company's website or in its annual proxy statement or annual report on Form 10-K.[39] *See "Parent/Subsidiary Relationships and Shareholdings."*	received from the company payments for property or services in an amount which, in the current or any of the last three fiscal years, exceeds greater of 5% of recipient's consolidated gross revenues or $200,000.[46] Charitable contributions are considered "payments" for purposes of this prohibition.[47] *See "Parent/Subsidiary Relationships and Shareholdings."*
Independence "Cooling Off" Period	Except for significant customer/supplier standard (described in fifth bullet immediately above), a three-year "cooling off" period applies to "bright-line" disqualification standards. No individual who has had such a relationship within "cooling off" period, or who is an immediate family member of an individual who had such a relationship, may be considered independent, even though he/she no longer has such relationship.[48]	Same requirement.
Parent/Subsidiary Relationships and Shareholdings	For purposes of applying "bright-line" standards of independence, a parent or subsidiary company of a listed company is considered as if it were the listed company. Company is considered a parent or subsidiary company of listed company if listed company and parent or subsidiary company are part of a consolidated group of companies for financial reporting purposes, as determined applying U.S. generally accepted accounting principles.[49] In relation to shareholding generally, "as the concern is independence from management, the Exchange does not view ownership of even a significant amount of stock, by itself, as a bar to an independence finding."[50]	Same requirement; however, the term "parent or subsidiary" covers entities the listed company controls and consolidates with the listed company's' financial statements.[51] In relation to shareholding generally, "[b]ecause Nasdaq does not believe that ownership of company stock by itself would preclude a board finding of independence, it is not included in the aforementioned objective ['bright-line'] factors."[52]

THE DEFINITION OF "INDEPENDENT" DIRECTOR		
Requirement	**NYSE**	**NASDAQ**
Director Independence Disclosure	Annual meeting proxy statement or annual report on Form 10-K must include disclosure relating to director independence, including transactions and arrangements considered by a board in assessing director independence.[53]	Same requirement.[54]
Additional Considerations	Director cannot simultaneously serve as a director or officer of two competing corporations that are engaged in commerce – also known as "interlocked" directorates, with some de minimis exceptions.[55]	Same requirement.

THE AUDIT COMMITTEE		
Requirement	**NYSE**	**NASDAQ**
Audit Committee	Company must have audit committee composed entirely of independent directors.[56]	Same requirement.[57]
Audit Committee Size	At least three members.[58]	Same requirement.[59]
Additional Independence Requirements for Audit Committee Members	In addition to the general NYSE independence requirements, audit committee member must meet the independence requirements enumerated in SOX § 301 and Exchange Act Rule 10A-3(b)(1): ▪ Director must not accept any direct or indirect consulting, advisory or other compensatory fee[60] from listed company other than compensation for director service; and ▪ Director must not be "affiliated"[61] with company or its subsidiaries.[62]	Same requirement. In addition, audit committee member must not have participated in preparation of financial statements of listed company or any current subsidiary at any time during past three years.[63] One director who meets SOX § 301 independence criteria and is not a current officer, employee or family member of an officer but is otherwise not independent under Nasdaq's independence standards may serve on audit committee (of at least three members) for a period of no longer than two years but not as audit committee chair, if board of directors, under "exceptional and limited circumstances," determines that membership on committee by that person is in the "best interests of the company and its shareholders." Disclose reliance on this exception, nature of relationship and reasons for determination on company's website or in annual meeting proxy statement or annual report on Form 10-K.[64]
Cure	Member may remain on audit committee even if no longer independent for reasons beyond member's reasonable control until earlier of next annual shareholders meeting or one year from occurrence of event causing failure to comply.[65] Company must notify NYSE upon learning of non-compliance. *See "Enforcement, Notifications and Affirmations."*	Same requirement. In addition, if company fails to comply with requirement that audit committee have at least three members due to one vacancy on committee, company has at least 180 days to comply.[66] Company must notify Nasdaq immediately upon learning of non-compliance. *See "Enforcement, Notifications and Affirmations."* Eligibility to rely on cure periods immediately following expiration of a phase-in period upon which the company was relying depends on compliance with audit committee composition requirement during phase-in period.[67]
Membership and Related Disclosures	Not addressed by NYSE. SEC Regulation S-K requires disclosure in proxy statement and annual report on Form 10-K of audit committee membership and various related information, as well as any reliance on exemptions from audit committee requirements.[68]	Not addressed by Nasdaq. Same requirement.

THE AUDIT COMMITTEE		
Requirement	**NYSE**	**NASDAQ**
Financial Literacy/Expertise Requirements	Must be financially literate, as determined by board, or must become financially literate within reasonable period of time following appointment. At least one committee member (who need not be committee chair) must have "accounting or related financial management expertise" in board's judgment. Board may presume that person who would be considered "audit committee financial expert" under SOX § 407 has accounting or related financial management expertise.[69]	Must be able to read and understand fundamental financial statements, including company's balance sheet, income statement and statement of cash flows, at time of appointment. In addition, at least one committee member required to have had past employment experience in finance or accounting, professional certification in accounting or other comparable experience or background such as being or having been a chief executive officer, chief financial officer or other senior official with financial oversight responsibilities, that results in individual's financial sophistication.[70] Director who qualifies as "audit committee financial expert" under SOX § 407 presumed to qualify as financially sophisticated audit committee member.[71]
Disclosure of Audit Committee Financial Expert	Not addressed by NYSE. SEC Regulation S-K requires disclosure in annual reports whether or not audit committee includes at least one "audit committee financial expert" and, if not, reasons why not (subject to certain exceptions). An "audit committee financial expert" has an understanding of financial statements and generally accepted accounting principles ("GAAP"); experience in preparing, auditing, analyzing or evaluating financial statements of companies comparable to the company or experience in actively supervising one or more persons engaged in such activities; experience in applying GAAP to accounting for estimates, accruals and reserves; and an understanding of internal accounting controls, procedures for financial reporting and audit committee functions, as a result of: ▪ education and experience as a public accountant, auditor, principal financial officer, controller or principal accounting officer of a company, or a position involving similar functions; ▪ experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor or person performing similar functions;	Not addressed by Nasdaq. Same SEC disclosure requirement.

THE AUDIT COMMITTEE		
Requirement	**NYSE**	**NASDAQ**
	▪ experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing or evaluation of financial statements; or ▪ other relevant experience.[72]	
Service on Multiple Audit Committees	If audit committee member simultaneously serves on audit committees of more than three public companies, board must determine that such simultaneous service would not impair member's ability to effectively serve on company's audit committee and disclose that determination on company's website or in annual proxy statement or annual report on Form 10-K.[73]	Not addressed.
Authority Over Auditor Relationships	Must be directly responsible for appointing and terminating company's independent auditor(s) and have the other responsibilities and authority required by Rule 10A-3 (described below).[74]	Same requirement.[75]
Related Person/Conflict of Interest Transactions	Audit committee or another independent body of the board shall conduct a reasonable prior review and oversight of related party transactions (i.e., transactions requiring disclosure under SEC Regulation S-K, Item 404) for potential conflicts of interest and will prohibit such transactions if it determines them to be inconsistent with the interests of the company and its shareholders.[76] Companies must adopt and disclose code of business conduct and ethics that should address, among other matters, conflicts of interest. Audit committee charters often give audit committee oversight responsibility with respect to code of conduct compliance by senior management. *See "Codes of Conduct and Ethics, and Corporate Governance Guidelines."*	Related person transactions must receive appropriate review and oversight for potential conflict of interest situations on an "ongoing basis" by audit committee or another independent body of board.[77] Same requirement.
Internal Audit	Company must have internal audit function.[78] Audit committee must have oversight responsibility over internal audit.	Not addressed.

THE AUDIT COMMITTEE		
Requirement	**NYSE**	**NASDAQ**
Audit Committee Responsibilities and Charter	Written charter must address committee's purpose, which must include: (i) assisting board oversight of integrity of company's financial statements, company's compliance with legal and regulatory requirements, independent auditor's qualifications and independence, and performance of company's internal audit function and independent auditors; and (ii) preparing disclosure required by SEC Regulation S-K Item 407(d)(3)(i) (relating to audit committee report to be included in annual proxy statement).[79]	Written charter must specify: (i) scope and how it carries out responsibilities, including structure, processes and membership requirements; (ii) responsibilities for ensuring its receipt from outside auditors of written statement delineating all relationships between auditor and company, and responsibility for actively engaging in dialogue with auditor with respect to disclosed relationships or services that may impact auditor objectivity and independence and for taking, or recommending that full board take, appropriate action to oversee outside auditor independence; and (iii) committee's purpose of overseeing company's accounting and financial reporting processes and financial statement audits.[80]
	Charter must also provide for audit committee duties and responsibilities to include: ▪ authority and responsibilities required by Exchange Act Rule 10A-3: ▪ appointing, compensating and retaining any registered public accounting firm and for overseeing the work of such firms in preparing or issuing any audit report (and any related work) including resolving any disagreements between management and such firms regarding financial reporting; ▪ establishing procedures for receipt, retention and treatment of complaints from company employees on accounting, internal accounting controls or auditing matters, as well as for confidential, anonymous submissions by company employees of concerns regarding questionable accounting or auditing matters;[81] ▪ authority to engage independent counsel and other advisers as it determines necessary to carry out its duties; and	Charter must also address audit committee authority and responsibilities required by Exchange Act Rule 10A-3 (same requirement).[90]

THE AUDIT COMMITTEE		
Requirement	**NYSE**	**NASDAQ**
	▪ having appropriate funding, as determined by audit committee, for payment of compensation to independent auditor and advisers to committee, and for payment of ordinary administrative expenses that are necessary or appropriate to audit committee carrying out its duties;[82] ▪ at least annually obtaining and reviewing report by independent auditor describing: (i) independent auditor's internal quality control procedures; (ii) any material issues raised by auditor's most recent internal quality control review or peer review of firm, or by any inquiry or investigation by governmental or professional authorities within preceding 5 years, respecting one or more independent audits carried out by firm, and steps taken to deal with any such issues; and (iii) all relationships between independent auditor and company to enable assessment of auditor's independence;[83] ▪ meeting to review and discuss annual audited financial statements and quarterly financial statements with management and independent auditor, including review of "Management's Discussion and Analysis of Financial Condition and Results of Operations;"[84] ▪ discussing earnings press releases and financial information and earnings guidance given to analysts and rating agencies;[85] ▪ discussing policies with respect to risk assessment and risk management;[86] ▪ meeting separately, from time to time, with management, with internal auditors and with independent auditors;	

THE AUDIT COMMITTEE		
Requirement	**NYSE**	**NASDAQ**
	▪ reviewing with independent auditor any audit problems or difficulties and management's response to such issues;[87] ▪ setting clear hiring policies for employees or former employees of independent auditor; ▪ reporting regularly to board of directors;[88] and ▪ evaluating audit committee annually.[89] Public Company Accounting Oversight Board ("PCAOB") Auditing Standards, including AS 1301, Communications with Audit Committees, requires an auditor to communicate with a company's audit committee regarding certain matters related to the conduct of the audit and to obtain certain information from the audit committee relevant to the audit.	Same requirements.
Review of Audit Committee Charter	Not addressed.	Company must certify that audit committee will annually review and reassess adequacy of its charter.[91]
Disclosure of Audit Committee Charter	Company's website (a requirement for all listed companies[92]) must include audit committee charter. Proxy statement or annual report on Form 10-K must state that charter is available on website and provide website address.[93]	Not addressed by Nasdaq. SEC Regulation S-K requires proxy statement disclosure of whether current audit committee charter is available on company's website and, if so, website address. If not so available, company should include charter as proxy statement appendix at least once every three years or in any year in which charter was materially amended. If charter is not on company's website and not in proxy statement for that fiscal year, disclose year charter was most recently included in proxy statement.[94]
Approval of Non-Audit Work	Not addressed by NYSE. SOX § 202 requires audit committees of all issuers to approve all audit services and independent auditor is prohibited from providing any otherwise permissible non-audit services without audit committee prior approval (subject to certain exceptions).[95]	Not addressed by Nasdaq. Same SOX requirement.
Exemptions	Audit committee members of the following entities must meet Exchange Act Rule 10A-3 independence criteria but not general NYSE independence requirements: ▪ Business development companies;	FPI audit committee members must meet Exchange Act Rule 10A-3 independence criteria but not general Nasdaq independence requirements.

THE AUDIT COMMITTEE		
Requirement	**NYSE**	**NASDAQ**
	▪ ICA-registered open-end management investment companies; and ▪ FPIs. Certain FPIs are not required to comply with the independent audit committee requirements. *See "Applicability to Foreign Private Issuers."* ICA-registered closed-end management investment companies are not required to make audit committee charter available on its website.[96]	Same exemption. Asset-backed issuers and other passive issuers are not required to have an independent audit committee.[97]

THE COMPENSATION COMMITTEE		
Requirement	**NYSE**	**NASDAQ**
Compensation Committee	Company must have compensation committee[98] composed only of independent directors.[99]	Same requirement.[100]
Compensation Committee Size	Not addressed.	At least two members.[101]
Additional Independence Requirements for Compensation Committee Members	In affirmatively determining independence of any director who will serve on compensation committee, board of directors must consider all factors specifically relevant to determining whether a director has a relationship to company which is material to that director's ability to be independent from management in connection with compensation committee member duties, including, but not limited to: ▪ source of compensation of such director, including any consulting, advisory or other compensatory fee paid by company to such director. Board should consider whether director receives compensation from any person or entity that would impair his/her ability to make independent judgments about company's executive compensation;[102] and ▪ whether such director is affiliated with company, a subsidiary of company or an affiliate of a subsidiary of company. Board should consider whether affiliate relationship places director under direct or indirect control of company or its senior management, or creates a direct relationship between director and members of senior management, in each case of a nature that would impair his/her ability to make independent judgments about company's executive compensation.[103]	Same requirement.[104] May be appropriate for certain affiliates, such as representatives of significant stockholders, to serve on compensation committees since their interests are likely aligned with those of other stockholders in seeking an appropriate executive compensation program.[105] One non-independent director who is not a current executive officer, employee or family member of an executive officer may serve on compensation committee (of at least three members) for a period of no longer than two years if board of directors, under "exceptional and limited circumstances," determines that membership on committee by that person is in the "best interests of the company and its shareholders." Disclose reliance on this exception, nature of relationship and reasons for determination on company's website or in annual meeting proxy statement or annual report on Form 10-K.[106]

THE COMPENSATION COMMITTEE		
Requirement	**NYSE**	**NASDAQ**
	Note that Exchange Act Rule 16b-3 provides that equity grants made by a committee of at least two "non-employee" directors are exempt from short-swing profit recovery provisions of Section 16(b); therefore, members of a compensation committee should be evaluated for "non-employee" director status.	*Same requirements*.
Cure	If company fails to comply with compensation committee composition requirements because compensation committee member ceases to be independent for reasons outside member's reasonable control, that person, with prompt notice to NYSE and only so long as majority of compensation committee members continue to be independent, may remain a compensation committee member until earlier of next annual meeting or one year from occurrence of the event that caused member to be no longer independent.[107] No cure period in case of a vacancy.	If company fails to comply with compensation committee composition requirement due to one vacancy, or one compensation committee member ceases to be independent due to circumstances beyond member's reasonable control, the company has at least 180 days to comply. Company must notify Nasdaq immediately upon learning of non-compliance.[108] *See "Enforcement, Notifications and Affirmations."* Eligibility to rely on cure period immediately following expiration of a phase-in period upon which the company was relying depends on compliance with compensation committee composition requirement during phase-in period.[109]
Compensation Committee Responsibilities and Charter	Written charter must address: ▪ committee's purpose and responsibilities, which must include: (i) reviewing and approving corporate goals and objectives relevant to CEO compensation, evaluating CEO's performance in light of those goals and objectives, and, either as a committee or together with other independent directors (as directed by board), determining and approving CEO's compensation level based on such evaluation;[110] (ii) making recommendations to board with respect to non-CEO executive officer compensation, and incentive-compensation and equity-based plans[111] that are subject to board approval;[112] and (iii) preparing disclosure required by SEC Regulation S-K Item 407(e)(5) (relating to compensation committee report recommending "Compensation Discussion and	Company must certify that it has adopted written compensation committee charter, which must specify: ▪ scope of compensation committee's responsibilities, and how it carries out those responsibilities, including structure, processes and membership requirements; ▪ compensation committee's responsibility for determining, or recommending to board for determination, CEO and non-CEO executive compensation; ▪ that CEO may not be present during voting or deliberations on his/her compensation; and ▪ compensation committee responsibilities and authority required by Exchange Act Rule 10C-1 (same requirement).117 Compensation committee will be responsible for determining any incentive-based compensation recovery (clawback).[118]

THE COMPENSATION COMMITTEE		
Requirement	**NYSE**	**NASDAQ**
	Analysis" to be included in company's annual proxy statement or in annual report on Form 10-K); ▪ annual performance evaluation of compensation committee; and ▪ committee's rights and responsibilities required by Exchange Act Rule 10C-1: ○ sole discretion of compensation committee to retain or obtain advice of compensation consultant, independent legal counsel or other adviser; ○ direct responsibility for appointment, compensation and oversight of work of any compensation consultant, independent legal counsel or other adviser retained by compensation committee; ○ provision of appropriate funding, as determined by compensation committee, by company for payment of reasonable compensation to compensation consultant, independent legal counsel or any other adviser retained by compensation committee; and ○ selection by compensation committee of compensation consultant, legal counsel or other adviser to compensation committee only after taking into consideration all factors relevant to that person's independence from management, including six factors included in "*Independence of Compensation Committee Advisers*" below.[113] Board may allocate these responsibilities to committees of its own denomination, provided that committees are composed entirely of independent directors and have a charter.[114] Charter should also address: (i) committee member qualifications; (ii) committee member appointment and removal; (iii) committee structure and operations (including	

THE COMPENSATION COMMITTEE		
Requirement	**NYSE**	**NASDAQ**
	authority to delegate to subcommittees); and (iv) committee reporting to the board.[115] Compensation committee will be responsible for determining any incentive-based compensation recovery (clawback).[116]	
Review of Compensation Committee Charter	Not addressed.	Company must certify that compensation committee will annually review and reassess adequacy of its charter.[119]
Disclosure of Compensation Committee Charter	Company's website must include compensation committee charter. Proxy statement or annual report on Form 10-K must state that charter is available on website and provide website address.[120]	Not addressed by Nasdaq. SEC Regulation S-K requires proxy statement disclosure of whether current compensation committee charter is available on company's website and, if so, website address. If not so available, company should include charter as proxy statement appendix at least once every three years or in any year in which charter was materially amended. If charter is not on company's website and not in proxy statement for that fiscal year, disclose year charter was most recently included in proxy statement.[121]
Independence of Compensation Committee Advisers	Compensation committee may select compensation consultant, legal counsel or other adviser to compensation committee only after taking into consideration all factors relevant to that person's independence from management, including: ▪ provision of other services to company by person that employs compensation consultant, legal counsel or other adviser; ▪ amount of fees received from company by person that employs compensation consultant, legal counsel or other adviser, as percentage of total revenue of person that employs compensation consultant, legal counsel or other adviser; ▪ policies and procedures of person that employs compensation consultant, legal counsel or other adviser that are designed to prevent conflicts of interest;	Same requirement.[124]

THE COMPENSATION COMMITTEE		
Requirement	**NYSE**	**NASDAQ**
	▪ any business or personal relationship of compensation consultant, legal counsel or other adviser with compensation committee member; ▪ any stock of company owned by compensation consultant, legal counsel or other adviser; and ▪ any business or personal relationship of compensation consultant, legal counsel, other adviser or person employing adviser with executive officer of company.[122] Requirement should not be construed to: (i) require compensation committee to implement or act consistently with advice or recommendations of compensation consultant, independent legal counsel or other adviser to compensation committee; or (ii) affect ability or obligation of compensation committee to exercise its own judgment in fulfillment of compensation committee duties. Compensation committee required to conduct independence assessment with respect to any compensation consultant, legal counsel or other adviser that provides advice to compensation committee, other than in-house legal counsel, and any compensation consultant, legal counsel or other adviser whose role is limited to following activities for which no disclosure would be required under SEC Regulation S-K Item 407(e)(3)(iii): (a) consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of company, and that is available generally to all salaried employees; or (b) providing information that either is not customized for a particular company or that is customized based on parameters that are not developed by compensation consultant, and about which compensation consultant does not provide advice. Compensation committee must consider enumerated independence factors before selecting or receiving advice	

THE COMPENSATION COMMITTEE		
Requirement	**NYSE**	**NASDAQ**
	from compensation adviser, but compensation consultants, legal counsel or other compensation advisers are not required to be independent. Compensation committee may select or receive advice from any compensation adviser it prefers including ones that are not independent, after considering six independence factors outlined above.[123]	
Disclosure of Compensation Consultant Conflicts of Interest	Not addressed by NYSE. SEC Regulation S-K requires all companies subject to proxy rules to disclose in proxy statements for annual meetings (or special meetings in lieu) the nature of any conflicts of interest raised by work of any compensation consultant who had any role in determining or recommending amount or form of either executive or director compensation during last fiscal year (where disclosure required pursuant to SEC Regulation S-K Item 407(e)(3)(iii)),[125] and how conflict is being addressed.[126]	Not addressed by Nasdaq. Same SEC disclosure requirement.
Exemptions	The following are not required to have an independent compensation committee: ▪ controlled companies; ▪ limited partnerships; ▪ companies in bankruptcy proceedings; ▪ ICA-registered management investment companies; ▪ passive investment organizations in the form of trusts; ▪ listed derivatives and special purpose securities; and ▪ FPIs (*see "Applicability to Foreign Private Issuers"*).[127] Smaller reporting companies are exempt from the *"Additional Independence Requirements for Compensation Committee Members"* and committee responsibility to assess *"Independence of Compensation Committee Advisers,"* but must comply with other requirements.[128]	The following are not required to have an independent compensation committee: ▪ controlled companies; ▪ limited partnerships; ▪ ICA-registered management investment companies; ▪ asset-backed issuers and other passive issuers; ▪ cooperatives; and ▪ FPIs (*see "Applicability to Foreign Private Issuers"*).[129] Same exemption. Smaller reporting companies may adopt board resolution that specifies compensation committee's responsibilities in lieu of adopting written compensation committee charter.[130]

THE NOMINATING/CORPORATE GOVERNANCE COMMITTEE		
Requirement	**NYSE**	**NASDAQ**
Nominating/ Corporate Governance Committee	Company must have nominating/corporate governance committee composed only of independent directors.[131]	Director nominees must be selected or recommended for board's selection by nominating committee composed only of independent directors or, if no such committee exists, by independent directors constituting majority of board's independent directors in vote in which only independent directors participate.[132] One non-independent director who is not a current executive officer, employee or family member of an executive officer may serve on nominating committee (of at least three members) for a period of no longer than two years if board of directors, under "exceptional and limited circumstances," determines that membership on committee by that person is in the "best interests of the company and its shareholders." Disclose reliance on this exception, nature of relationship and reasons for determination on company's website or in annual meeting proxy statement or annual report on Form 10-K.[133]
Nominating/ Corporate Governance Committee Responsibilities and Charter	Written charter must address: ▪ committee's purpose and responsibilities, which must include: (i) identifying individuals qualified to become board members consistent with board-approved criteria; (ii) selecting, or recommending that board select, director nominees for next annual meeting of shareholders; (iii) developing and recommending to board a set of corporate governance guidelines; and (iv) overseeing evaluation of board and management;[134] and ▪ annual performance evaluation of committee.[135] Board may allocate these responsibilities to committees of its own denomination, provided that committees are composed entirely of independent directors and have a charter.[136] Charter should also address: (i) committee member qualifications; (ii) committee member appointment and removal; (iii) committee structure and operations (including authority to delegate to subcommittees); and (iv) committee	Must address, by written committee charter provision or board resolution: (i) process for board selection of nominees for election by shareholders; and (ii) such other matters relating to director nominations as may be required under federal securities laws (such as policy regarding consideration that will be given to director candidates proposed by securityholders, which must be disclosed in proxy statement[138]).[139]

THE NOMINATING/CORPORATE GOVERNANCE COMMITTEE		
Requirement	**NYSE**	**NASDAQ**
	reporting to board. Charter should give committee sole authority to retain and terminate any search firm to be used to identify director candidates, including sole authority to approve search firm's fees and other retention terms.[137]	
Disclosure of Nominating/ Corporate Governance Committee Charter	Company's website must include nominating/corporate governance committee charter. Proxy statement or annual report on Form 10-K must state that charter is available on website and provide website address.[140]	Not addressed by Nasdaq. SEC Regulation S-K requires proxy statement disclosure of whether current nominating committee charter is available on company's website and, if so, website address. If not so available, company should include charter as proxy statement appendix at least once every three years or in any year in which charter was materially amended. If charter is not on company's website and not in proxy statement for that fiscal year, disclose year charter was most recently included in proxy statement.[141]
Exemption from Independent Nominating Committee Process	Director nominations need not be subject to independent nominating committee process if company required by contract or otherwise to provide a party the ability to nominate one or more directors.[142]	Same exemption.[143] Company also need not comply if it is subject to a binding obligation establishing a different nomination process that was in effect prior to November 4, 2003 that is inconsistent with the requirement.[144]
Exemptions	The following are not required to comply with the independent nominating/corporate governance committee requirements: ▪ controlled companies; ▪ limited partnerships; ▪ companies in bankruptcy proceedings; ▪ ICA-registered management investment companies; ▪ passive investment organizations in the form of trusts; ▪ listed derivatives and special purpose securities; and ▪ FPIs (*see "Applicability to Foreign Private Issuers"*).[145]	The following are not required to have independent director oversight of director nominations: ▪ controlled companies; ▪ limited partnerships; ▪ ICA-registered management investment companies; ▪ asset-backed issuers and other passive issuers; ▪ cooperatives; and ▪ FPIs (*see "Applicability to Foreign Private Issuers"*).[146]

CERTAIN SPECIALIZED REQUIREMENTS

Cybersecurity Risk Oversight[147]

Item 106 of SEC Regulation S-K requires annual report disclosure of a company's risk management, strategy and governance of cybersecurity, including a description of the board of directors' oversight of risks from cybersecurity threats, and if applicable, the identification of any board committee or subcommittee responsible for such oversight (and a description of the processes by which the board of directors or such committee is informed about such risks). Item 106(c) of SEC Regulation S-K also calls for a description of management's role in assessing and managing material risks from cybersecurity threats. All companies must comply with the risk management, strategy and governance disclosure beginning with annual reports for the fiscal year ending on or after December 15, 2023.

Board Committee Approval of Certain Swap Transactions

An "appropriate committee" of a public company filing SEC reports that engages in derivatives activities must review and approve decisions to enter into covered "swap transactions" relying on so-called "end-user exceptions" from (1) Exchange Act requirements to clear security-based swaps or execute security-based swap through national securities exchange and (2) Commodity Exchange Act requirements to clear and execute swaps through a board of trade or swap execution facility (Dodd-Frank Sections 723(b) and 763(a)).

Swap clearing compliance requirements phased in at different times for different categories of market participants by Commodity Futures Trading Commission ("CFTC").[148] The SEC has proposed (but not yet adopted) corresponding rule for security-based swaps.[149] Per CFTC guidance, a committee is "appropriate" only if it is "specifically authorized to review and approve the . . . decision to enter into swaps." The Board must "set appropriate policies" governing the use of swaps subject to end-user exception and review these policies at least annually, and, as appropriate, more often upon triggering event (such as implementing new hedging strategy).[150]

Mandatory Risk Committees for Certain Financial Companies

Certain entities must establish a risk committee responsible for oversight of enterprise-wide risk management practices:

(a) publicly traded "nonbank financial companies supervised by the Federal Reserve Board of Governors" (defined to mean company that is substantially engaged in financial activities in U.S. where it has been determined by Financial Stability Oversight Council that material financial distress at the company would pose a threat to U.S. financial stability (other than bank holding companies or their subsidiaries[151]);

(b) publicly traded bank holding companies with total consolidated assets of $50 billion or more; and

(c) publicly traded bank holding companies with total consolidated assets of less than $50 billion where Federal Reserve Board of Governors has determined that establishment of risk committee is necessary or appropriate to promote sound risk management practices (Dodd-Frank Section 165).[152]

Risk committees must, among other things, approve and periodically review risk-management policies of a company's global operations and oversee operation of a company's global risk-management framework; additional responsibilities are required for risk committees of bank holding companies with at least $250 billion in total consolidated assets. Each risk committee must be chaired by an "independent director" (defined in SEC Regulation S-K for companies publicly traded in the United States) and include at least one member with "experience in identifying, assessing, and managing risk exposures of large, complex firms." Risk management experience must relate to large, complex financial firms for bank holding companies with $50 billion or more in total consolidated assets. Risk committees are required to meet at least quarterly and have a written charter. Similar rules apply to foreign banking organizations.[153]

CERTAIN SPECIALIZED REQUIREMENTS		
CODES OF CONDUCT AND ETHICS, AND CORPORATE GOVERNANCE GUIDELINES		
Requirement	**NYSE**	**NASDAQ**
Disclosure of Code of Ethics for Chief Executive Officer and Senior Financial Officers	SOX § 406 requires companies to disclose whether or not they have adopted code of ethics applicable to principal executive officer, principal financial officer and controller or principal accounting officer (and, if not, why not) that includes standards reasonably necessary to deter wrongdoing and, promote: ▪ honest and ethical conduct, including handling of actual or apparent conflicts of interest between personal and professional relationships; ▪ full, fair, accurate, timely and understandable disclosure in SEC periodic reports and other public communications; ▪ compliance with applicable governmental rules ("SOX 406 Code"); ▪ prompt internal reporting of code violations; and ▪ accountability for code adherence.[154] SEC Regulation S-K requires SOX 406 Code to be publicly available by (a) filing as exhibit to annual report, (b) posting on company's website (provided company has disclosed in its most recently filed annual report its website address and intention to provide disclosure in this manner) or (c) undertaking in annual report to provide copy to any person upon request.[155]	Same requirement.
Code of Business Conduct and Ethics	Companies must adopt code of business conduct and ethics (beyond SOX 406 Code discussed above) for directors, officers and employees that should address: ▪ conflicts of interest; ▪ corporate opportunities; ▪ confidentiality; ▪ fair dealing with customers, suppliers, competitors and employees;	Companies must adopt code of conduct for directors, officers and employees that addresses the matters set forth in SOX Section 406.

CERTAIN SPECIALIZED REQUIREMENTS		
	▪ protection and proper use of company assets; ▪ compliance with laws, rules and regulations (including insider trading laws); and ▪ encouraging reporting of any illegal or unethical behavior.	
	Code must contain compliance standards and procedures that will facilitate effective operation of code, and should ensure prompt and consistent actions against violations.[156]	Code must provide for enforcement mechanism that ensures prompt and consistent enforcement of code, protection for persons reporting questionable behavior, clear and objective standards for compliance, and fair process by which to determine violations.[157]
Code of Conduct and Ethics Waivers	Code must require that any waivers given to directors or executive officers must be approved by board or board committee.[158]	Same requirement.[159]
Disclosure of Code of Conduct and Ethics	Company's website must include code. Proxy statement or annual report on Form 10-K must state that code is available on website and provide website address.[160]	Code must be publicly available.[161] *See "Disclosure of Code of Ethics for Chief Executive Officer and Senior Financial Officers*."
Disclosure of Code Amendments	Not addressed by NYSE. SEC Regulation S-K requires companies to promptly disclose on Form 8-K (or via company's website, provided company has disclosed in most recently filed annual report its website address and intention to provide disclosure in this manner) the changes in the code that apply to the CEO, CFO, principal accounting officer or controller or persons performing similar functions and that relate to any element required to be included in a SOX 406 Code.[162]	Not addressed by Nasdaq. Same SEC disclosure requirement.
Disclosure of Code of Conduct and Ethics Waivers	Disclose waivers given to directors or executive officers in press release, on company's website or on Form 8-K within four business days.[163]	Same requirement but Nasdaq also requires disclosure of reasons for waiver.[164]

CERTAIN SPECIALIZED REQUIREMENTS		
Corporate Governance Guidelines and Disclosure	Companies required to adopt corporate governance guidelines that address: ▪ director qualification standards; ▪ director responsibilities; ▪ director access to management and, as necessary, independent advisers; ▪ director compensation; ▪ director continuing education and orientation; ▪ management succession; and ▪ annual board performance evaluation.[165] Guidelines must be on company's website. Proxy statement or annual report on Form 10-K must state that guidelines are available on website and provide website address.[166]	Not addressed.
Exemptions	The following are not required to comply with the requirements to have a code of conduct and ethics (that goes beyond the SOX 406 Code) and corporate governance guidelines: ▪ ICA-registered open-end management investment companies; ▪ passive investment organizations in the form of trusts; ▪ listed derivatives and special purpose securities; and ▪ FPIs (*see "Applicability to Foreign Private Issuers"*).[167]	The following are not required to comply with the requirement to have a code of conduct and ethics (that goes beyond the SOX 406 Code): ▪ limited partnerships; ▪ ICA-registered management investment companies; ▪ asset-backed issuers and other passive issuers; and ▪ FPIs (*see "Applicability to Foreign Private Issuers"*).[168]

APPLICABILITY TO FOREIGN PRIVATE ISSUERS		
Requirement	**NYSE**	**NASDAQ**
FPI Exemption – Generally	FPIs are permitted to follow home country practices in lieu of U.S. corporate governance requirements, except: ▪ must have an audit committee that satisfies the requirements of Exchange Act Rule 10A-3 (with some exceptions discussed below);[169] ▪ CEO must promptly notify NYSE in writing after any executive officer of company becomes aware of any non-compliance (material or non-material) with any applicable provision of NYSE corporate governance listing standards; ▪ must implement a policy providing for incentive-based compensation recovery (clawback), disclose such policy, and file such policy as an exhibit to its annual report; ▪ must describe in its annual report the board of directors' oversight of risks from cybersecurity threats, including, if applicable, identify any board committee or subcommittee responsible for the oversight of risks from cybersecurity threats, and describe the processes by which the board or such committee is informed about such risks (beginning with annual reports for the fiscal year ending on or after December 15, 2023);[170] and ▪ FPI must provide annual and interim affirmations regarding company's governance. *See "Enforcement, Notifications and Affirmations."*[171]	Same exemptions but Nasdaq companies: ▪ are not required to provide affirmations[172]; and ▪ are required to disclose any waivers of the code of conduct for directors or executive officers, which must be approved by the board or a board committee, within four business days by providing website disclosure that satisfies the requirements of Item 5.05(c) of Form 8-K, by including disclosure in a Form 6-K or by distributing a press release.[173]
FPI Exemption – Audit Committee Requirements	Not addressed by NYSE. SOX § 301 exempts FPIs from certain independence and other audit committee requirements as follows: ▪ non-executive officer employees allowed to sit on audit committee if employee elected or named to board of directors or audit committee pursuant to company's governing law or documents, employee collective	Not addressed by Nasdaq. Same SOX exemptions.

APPLICABILITY TO FOREIGN PRIVATE ISSUERS		
Requirement	**NYSE**	**NASDAQ**
	bargaining or similar agreement, or other home country legal or listing requirements; ▪ one audit committee member could be an affiliate of FPI if: (i) "no compensation" prong of Exchange Act Rule 10A-3 independence requirements is satisfied; (ii) member in question has only observer status and is not voting member or chair of audit committee; and (iii) neither member in question nor affiliate is an executive officer of FPI; ▪ one audit committee member could be representative or designee of foreign government or foreign governmental entity that is an affiliate of FPI if: (i) "no compensation" prong of Exchange Act Rule 10A-3 independence requirements is satisfied; and (ii) member is not an executive officer of FPI; and ▪ no separate audit committee required if: (i) company has board of auditors (or similar body) or statutory auditors (required in several jurisdictions); (ii) board/statutory auditors required under home country legal or listing provisions to be separate from board of directors or composed of one or more directors and one or more non-directors; (iii) board/statutory auditors operate under legal or listing provisions intended to provide oversight of outside auditors that is independent of management; (iv) membership on board/statutory auditors excludes executive officers of FPI; and (v) certain other requirements are met.[174]	

APPLICABILITY TO FOREIGN PRIVATE ISSUERS		
Requirement	**NYSE**	**NASDAQ**
Disclosure of FPI Exemption	Form 20-F filers must include in Form 20-F a statement of significant ways in which their corporate governance practices differ from those required of U.S. companies by NYSE listing standards. All other FPIs may disclose such differences either on their website or in annual report filed with SEC.[175]	FPIs must disclose in annual report filed with SEC (or on its website in English if it does not file annual report) any significant ways in which its corporate governance practices differ from those required of U.S. companies by Nasdaq listing standards, and describe alternate home country practice followed.[176] First time exemption is claimed, FPI must provide home country lawyer's certification that company's practices are not prohibited by home country's laws.[177]
	FPIs without an independent compensation committee must provide annual report disclosure of reasons company does not have such committee. *See "Compensation Committee Requirements."*[178]	Same requirement.

ENFORCEMENT, NOTIFICATIONS AND AFFIRMATIONS		
Requirement	**NYSE**	**NASDAQ**
Compliance Certification	CEO must certify annually to NYSE within 30 days after annual shareholders meeting (simultaneous with annual written affirmation) that he/she not aware of any listing standard violations or state how standards are not satisfied.[179]	Company must certify to Nasdaq its compliance with certain corporate governance listing standards.[180]
Notification of Non-Compliance	Prompt written notification by CEO required after any executive officer becomes aware of *any* non-compliance (material or non-material) with corporate governance listing standards.[181]	Same requirement but notification provided by company (not CEO).[182]
	Notifications in relation to material non-compliance trigger Form 8-K disclosure obligations under Item 3.01.	Same requirement.
Annual Affirmations	Company must submit affirmation annually to NYSE (within 30 days after annual meeting) regarding details of compliance/non-compliance with corporate governance listing standards.[183]	Not addressed.
Interim Affirmations	Company must submit interim written affirmation (within 5 business days) each time a change occurs in board composition or independence or any committees required by listing standards and certain other matters.[184]	Not addressed.
Audit and Compensation Committee Requirements	NYSE prohibited from listing or continued listing of companies that do not comply with audit committee and compensation committee requirements of Exchange Act Rules 10A-3 and 10C-1 respectively, subject to applicable cure periods and exemptions.	Same requirement.
Public Reprimand Letter and Delisting	NYSE may issue public reprimand letter to company and may suspend or delist company for violating listing standards. Delisting required in case of Exchange Act Rule 10A-3 audit committee violations (reprimand letter insufficient).[185]	Nasdaq may issue public reprimand letter to company, limit listing or delist company for violating governance or notification listing standards.[186]
	Notifications of delisting or public reprimand issuance trigger Form 8-K disclosure obligations under Item 3.01.	Same requirement.

ENFORCEMENT, NOTIFICATIONS AND AFFIRMATIONS		
Requirement	**NYSE**	**NASDAQ**
Exemptions	The following are not required to notify as to non-compliance or provide affirmations: ▪ passive investment organizations in the form of trusts; and ▪ listed derivatives and special purpose securities. The following are not required to provide CEO compliance certifications: ▪ ICA-registered open-end management investment companies; and ▪ FPIs (*see "Applicability to Foreign Private Issuers"*).[187]	No exemptions.

IPO AND OTHER TRANSITIONAL PROVISIONS: NYSE[188] AND NASDAQ[189]

Event	*Majority of Independent Directors*	*Independent Audit Committee*	*Independent Compensation & Nominating Committees* *(Assuming for Nasdaq Nominating Responsibilities Delegated to Committee and not Independent Directors)*	*Internal Audit Function*	*Website Posting of Committee Charters, Governance Guidelines & Code of Conduct*
IPO[190]	NYSE & Nasdaq: Within 1 year of "listing date" (the date that the company's securities first trade on NYSE/Nasdaq)	NYSE & Nasdaq: At least 1 independent member by listing date Majority of independent members within 90 days of effective date of registration statement At least 2 members within 90 days of listing date Fully independent committee within 1 year of effective date of registration statement At least 3 members within 1 year of listing date No non-independent members permitted during phase-in if the company is required to file periodic reports with SEC before listing	NYSE & Nasdaq: At least 1 independent member on each committee by earlier of date IPO closes or 5 business days from listing date Majority of independent members on each committee within 90 days of listing date Fully independent committees within 1 year of listing date Nasdaq only: At least 2 compensation committee members within 1 year of listing date	NYSE: Within 1 year of listing date Nasdaq: Not required	NYSE: By earlier of date IPO closes or 5 business days from listing date Nasdaq: Not required
Carve-out or spin-off transaction[191]	NYSE & Nasdaq: Same as for IPO	NYSE & Nasdaq: Same as for IPO	NYSE & Nasdaq: At least 1 independent member on each committee by date transaction closes Majority of independent members on each committee within 90 days of listing date Fully independent committees within 1 year of listing date Nasdaq only: At least 2 compensation committee members within 1 year of listing date	NYSE: Same as for IPO Nasdaq: Not required	NYSE: By date transaction closes Nasdaq: Not required
Newly issued upon emergence	NYSE & Nasdaq: Same as for IPO	NYSE & Nasdaq: Fully independent committee of at least 3 members by	NYSE & Nasdaq: At least 1 independent member on each committee by listing date	NYSE: By listing date	NYSE: By listing date

Event	Majority of Independent Directors	Independent Audit Committee	Independent Compensation & Nominating Committees (Assuming for Nasdaq Nominating Responsibilities Delegated to Committee and not Independent Directors)	Internal Audit Function	Website Posting of Committee Charters, Governance Guidelines & Code of Conduct
from bankruptcy[192]		listing date unless Exchange Act Rule 10A-3 exemption available	Majority of independent members on each committee within 90 days of listing date Fully independent committees within 1 year of listing date Nasdaq only: At least 2 compensation committee members within 1 year of listing date	Nasdaq: Not required	Nasdaq: Not required
Transfers from another market -- previously registered pursuant to Exchange Act Section 12(b)[193]	NYSE & Nasdaq: Within 1 year of listing date to extent exchange on which it was listed did not have same requirement; if substantially similar requirement on other exchange, other exchange's transition period (if any)	NYSE: Fully independent committee by listing date unless Exchange Act Rule 10A-3 exemption available At least 3 members within 1 year of listing date to extent exchange on which it was listed did not have same requirement; if substantially similar requirement on other exchange, other exchange's transition period (if any) Nasdaq: Within 1 year of listing date to extent exchange on which it was listed did not have same requirement; if substantially similar requirement on other exchange, other exchange's transition period (if any)	NYSE & Nasdaq: Within 1 year of listing date to extent exchange on which it was listed did not have same requirement; if substantially similar requirement on other exchange, other exchange's transition period (if any)	NYSE: Within 1 year of listing date to extent exchange on which it was listed did not have same requirement; if substantially similar requirement on other exchange, other exchange's transition period (if any) Nasdaq: Not required	NYSE: Within 1 year of listing date to extent exchange on which it was listed did not have same requirement; if substantially similar requirement on other exchange, other exchange's transition period (if any) Nasdaq: Not required
Transfers from another market -- previously registered pursuant to Exchange Act Section 12(g)[194]	NYSE & Nasdaq: Same as for IPO	NYSE & Nasdaq: Fully independent committee by listing date unless Exchange Act Rule 10A-3 exemption available At least 1 member by listing date At least 2 members within 90 days of listing date At least 3 members within 1 year of listing date	NYSE & Nasdaq: At least 1 independent member on each committee by listing date Majority of independent members on each committee within 90 days of listing date Fully independent committees within 1 year of listing date	NYSE: By listing date Nasdaq: Not required	NYSE: By listing date Nasdaq: Not required

Event	Majority of Independent Directors	Independent Audit Committee	Independent Compensation & Nominating Committees (Assuming for Nasdaq Nominating Responsibilities Delegated to Committee and not Independent Directors)	Internal Audit Function	Website Posting of Committee Charters, Governance Guidelines & Code of Conduct
			Nasdaq only: At least 2 compensation committee members within 1 year of listing date		
Cease to qualify as a controlled company[195]	NYSE & Nasdaq: Within 1 year of date of "status change" (the date the company ceases to be a controlled company)	NYSE & Nasdaq: Already required to comply	NYSE & Nasdaq: At least 1 independent member on each committee by date of status change Majority of independent members on each committee within 90 days of date of status change Fully independent committees within 1 year of date of status change Nasdaq only: At least 2 compensation committee members within 1 year of date of status change	NYSE: Already required to comply Nasdaq: Not required	NYSE: Post compensation & nominating committee charters by date of status change; already required to comply for other documents Nasdaq: Not required
Cease to qualify as a foreign private issuer[196]	NYSE & Nasdaq: Within 6 months of date it fails to qualify as a foreign private issuer – tested annually at end of most recently completed second fiscal quarter ("FPI determination date")	NYSE & Nasdaq: Members must comply with NYSE/Nasdaq independence requirements (in addition to Rule 10A-3(b)(1) independence requirements that already apply) and have at least 3 committee members within 6 months of FPI determination date	NYSE & Nasdaq: Within 6 months of FPI determination date	NYSE: By FPI determination date Nasdaq: Not required	NYSE: Within 6 months of FPI determination date Nasdaq: Not required
Cease to qualify as a smaller reporting company[197]	NYSE & Nasdaq: Already required to comply	NYSE & Nasdaq: Already required to comply	NYSE & Nasdaq: At least 1 member of compensation committee must meet enhanced independence requirements within 6 months of beginning of fiscal year ("start date") following date it ceases to meet the requirements for a smaller reporting company (tested	NYSE: Already required to comply Nasdaq: Not required	NYSE: Already required to comply Nasdaq: Not required

Event	Majority of Independent Directors	Independent Audit Committee	Independent Compensation & Nominating Committees *(Assuming for Nasdaq Nominating Responsibilities Delegated to Committee and not Independent Directors)*	Internal Audit Function	Website Posting of Committee Charters, Governance Guidelines & Code of Conduct
			annually at end of most recently completed second fiscal quarter) Majority of compensation committee members must meet enhanced independence requirements within 9 months of start date Fully independent compensation committee within 1 year of start date NYSE & Nasdaq: Already required to comply with all other independent compensation and nominating committee requirements, including Nasdaq requirement to have compensation committee of at least 2 members		

ENDNOTES

[1] Defined in Exchange Act Rule 3b-4(c). NYSE Listed Company Manual Sections 303A.00, 303A.11; Nasdaq Listing Rule 5615(a)(3).

[2] NYSE Listed Company Manual Section 303A.00; Nasdaq Listing Rule 5615(a)(7)(A). A company is "controlled" where more than 50% of the voting power for the election of directors is held by an individual, a group or another company.

[3] *See* NYSE Listed Company Manual Section 303A.00; Nasdaq Listing Rule 5605(d)(5); Nasdaq IM-5605-6. "Smaller reporting company" means an issuer (other than an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent that is not a smaller reporting company) that had (a) a public float of less than $250 million as of the last business day of its most recently completed second fiscal quarter or as of a date within 30 days of the date of filing of an initial registration statement, or (b) annual revenues of less than $100 million as of the most recently completed fiscal year for which audited financial statements are available and either: (i) no public float; or (ii) a public float of less than $700 million. Exchange Act Rule 12b-2.

[4] Nasdaq in its discretion may deny continued listing to a company in bankruptcy proceedings, even though it continues to meet all applicable listing requirements. Nasdaq Listing Rule 5110(b).

[5] Nasdaq-listed limited partnerships are governed by a separate Nasdaq governance listing standard that reflects certain of the listing standards applicable to corporations. Nasdaq Listing Rule 5615(a)(4).

[6] *See* NYSE Listed Company Manual Section 303A.00 and Nasdaq Listing Rule 5615(a)(5). A discussion of the variations applicable to registered investment companies are beyond the scope of this summary.

[7] Nasdaq Listing Rule 5605(f) required that companies have at least two members on its board of directors who are diverse, including at least one diverse director who self-identifies as female and at least one diverse director who self-identifies as an underrepresented minority or LGBTQ+, subject to certain exceptions for smaller boards and applicable phase-in periods. Companies that did not meet this requirement were required to explain why. Nasdaq Listing Rule 5606 required that companies disclose board-level diversity statistics annually using a standardized board diversity matrix in either a company's proxy statement or on the company's website, subject to an applicable phase-in period.

[8] Note that Goldman Sachs has specific board diversity requirements in order to work with a company in connection with its IPO. Investors also have their own voting policies relating to board diversity. See "The Big 3 and ESG" here. Additionally, public companies may need to comply with state law requirements relating to board diversity; for example, female director quota requirements in Washington State and a diversity reporting requirement in California starting in 2026. In 2022, Los Angeles Superior Courts struck down as unconstitutional two California laws requiring publicly listed companies headquartered in California to have a minimum number of diverse directors (SB 826 requiring female directors was struck down in Crest v. Padilla, No. 19-ST-CV-27561 (LA Super. Ct., May 13, 2022), and AB 979 requiring directors from "underrepresented communities" was struck down in Crest v. Padilla, No. 20-ST-CV-37513 (LA Super. Ct. April 1, 2022) and in Alliance for Fair Board Recruitment v. Weber, No. 21-cv-01951 (E.D. Cal. May 16, 2023)).

[9] *See, e.g.*, New York Insurance Law Section 1202 and New York Banking Law Section 7001.

[10] NYSE Listed Company Manual Section 303A.01. Note that the NYSE takes the view that board observers, directors emeritus, and nominees in training who attend board and/or committee meetings are counted as directors – and therefore counted for purposes of determining whether the board is comprised of a majority

of independent directors – if they have a *right* to attend board meetings. If the board (or committee) can ask the person to leave the meeting, the NYSE would *not* count him or her as a director.

[11] Nasdaq Listing Rule 5605(b)(1).

[12] Companies are required to regain compliance by the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply, the company shall instead have 180 days from such event to regain compliance. Nasdaq Listing Rule 5605(b)(1)(A). *See also* Nasdaq Listing Rule 5810(c)(3)(E).

[13] A company is not eligible for the cure period immediately following the expiration of a phase-in period under Rule 5615(b) upon which the company was relying, unless the company (1) complied with the majority independent board requirement during the phase-in period, and (2) fell out of compliance with the majority independent board requirement after having complied with the requirement before the end of the phase-in period. In these circumstances, as provided in Rule 5615(b), the company will not be considered non-compliant with the requirement until the end of the phase-in period. For purposes of computing the applicable cure period, the event that caused the failure to comply shall be the event causing the company to fall out of compliance after having complied with the requirement, and not the end of the phase-in period. Nasdaq Listing Rule 5605(b)(1)(B).

[14] NYSE Listed Company Manual Section 303A.03.

[15] Commentary to NYSE Listed Company Manual Section 303A.03.

[16] Nasdaq Listing Rule 5605(b)(2).

[17] Executive sessions may occur more frequently than twice a year in conjunction with regularly scheduled board meetings. Nasdaq IM-5605-2.

[18] Commentary to NYSE Listed Company Manual Section 303A.03. Note that many companies that have a combined Chair/CEO appoint an independent lead director who presides at meetings of non-management directors and has other functions (for example, approval of the board calendar, agenda and materials).

[19] Disclosure Requirement of NYSE Listed Company Manual Section 303A.03. If these disclosures are provided on a company website, the company must disclose in its proxy statement or annual report that it is including such disclosures on its website and provide the website address.

[20] NYSE Listed Company Manual Section 303A.00.

[21] Nasdaq Listing Rule 5615.

[22] NYSE Listed Company Manual Sections 303A.06, 303A.07.

[23] NYSE Listed Company Manual Section 303A.05.

[24] NYSE Listed Company Manual Section 303A.04.

[25] Nasdaq Listing Rule 5605(c).

[26]Nasdaq Listing Rule 5605(d)(2). Nasdaq-listed companies are required to have a compensation committee of at least two members, each of whom must be an "Independent Director" as defined under Rule 5605(a)(2).

[27] Nasdaq Listing Rule 5605(e).

[28] The NYSE listing standards state that a material relationship "can include commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships, among others." Commentary to NYSE Listed Company Manual Section 303A.02(a). *See also* SEC Regulation S-K Item 404.

[29] NYSE Listed Company Manual Section 303A.02(a). References to a "listed company" for these purposes include a subsidiary that is in a consolidated group for financial reporting purposes with the listed company and a parent company with which the listed company is in a consolidated group for financial reporting purposes. General Commentary to NYSE Listed Company Manual Section 303A.02. *See* "Parent/Subsidiary Relationships and Shareholdings."

[30] The term "company" includes any parent or subsidiary of the company. The term "parent or subsidiary" is intended to cover entities the issuer controls and consolidates with the company's financial statements as filed with the SEC (but not if the company reflects such entity solely as an investment in its financial statements). Nasdaq IM-5605. *See* "Parent/Subsidiary Relationships and Shareholdings."

[31] Nasdaq Listing Rule 5605(a)(2).

[32] For purposes of Section 303A, an "immediate family member" includes a person's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and anyone (other than domestic employees) who shares such person's home. When applying the look-back provisions in Section 303A.02(b), listed companies need not consider individuals who are no longer immediate family members as a result of legal separation or divorce, or those who have died or become incapacitated. Commentary to NYSE Listed Company Manual Section 303A.02(b).

[33] For purposes of Section 303A, the term "executive officer" has the same meaning specified for the term "officer" in Exchange Act Rule 16a-1(f). NYSE Listed Company Manual Section 303A.02, fn 1. Rule 16a-1(f) provides that the term "officer" shall include the company's president, principal financial officer, principal accounting officer (or, if there is no such accounting officer, the controller), any vice president of the company in charge of a principal business unit, division or function, any other officer who performs a policy-making function, or any other person who performs similar policy-making functions for the issuer.

[34] However, service within the past three years as an interim Chairman, CEO or other executive officer does not automatically disqualify a director from being considered independent following such interim employment. Commentary to NYSE Listed Company Manual Section 303A.02(b)(i).

[35] Compensation received (i) for prior service as an interim Chairman, CEO or other executive officer or (ii) by an immediate family member for service as an employee (other than an executive officer) of the listed company is not considered disqualifying for this purpose. Commentary to NYSE Listed Company Manual Section 303A.02(b)(ii).

[36] By comparison to the similar Nasdaq standard, this standard may apply to bar not only a simultaneous interlock, that is, one where the two individuals' crossing relationships occur at the same point in time during the three-year look-back period, but more broadly to prohibit an overlap by reason of compensation committee membership on the part of a present executive officer of the listed company at any point during the three-year period in which a director served as an executive officer of the company on which the listed company's executive officer served on the compensation committee.

[37] This test would not automatically disqualify as "independent" a director who has a consulting (as opposed to employment) relationship with an organization that provides or receives services; however, the board would still need to consider the consulting relationship when determining if the director has a "material relationship" that would impair independence.

[38] The payments and consolidated gross revenue numbers to be used for this independence test must be those from the last completed fiscal year, if available. Note that only directors who *currently* have such a relationship are disqualified from independent status; if the director had such a relationship within the past three years but does not currently, he or she is not so disqualified. Companies may have business relationships (as a vendor, for example) with a charitable organization and payments related to such business relationships – as opposed to charitable donations – are intended to be covered by this test.

[39] NYSE Listed Company Manual Section 303A.02(b). If this disclosure is provided on a company website, the company must disclose in its proxy statement or annual report that it is including such disclosure on its website and provide the website address. Disclosure Requirement of NYSE Listed Company Manual Section 303A.02(b).

[40] For purposes of Rule 5605, a family member includes a person's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and anyone (other than domestic employees) who shares such person's home. Nasdaq Listing Rule 5605(a)(2) and IM-5605 (as approved by the SEC on February 13, 2020 to exclude domestic employees who share the director's home and stepchildren who do not share the director's home (SEC Release No. 34-88210)). This definition as amended now aligns with that in NYSE Listed Company Manual General Commentary to Section 303A.02(b).

[41] References to "executive officer" mean those officers covered by Exchange Act Rule 16a-1(f). Nasdaq IM-5605. *See* note 24.

[42] Payments to a director to provide his or her services as an interim executive officer for a year or less will not be considered employment constituting a per se bar to a finding of independence, but the board must nevertheless affirmatively determine that such service and the compensation received for such service would not interfere with his or her ability to exercise independent judgment as a director. A director would not be considered independent while serving as an interim officer. Nasdaq IM-5605.

[43] Two examples of disqualifying compensation provided by Nasdaq IM-5605 are payments to a director (or the director's family member) pursuant to a consulting or personal service contract or political contributions to a director's (or his family member's) campaign. The following types of payments are described in IM-5605 as being "non-compensatory in nature:" (i) payments arising solely from investments in the company's securities; (ii) certain loans from financial institutions made in the ordinary course of business; (iii) certain payments from financial institutions in connection with the deposit of funds made in the ordinary course of business; and (iv) loans permitted under Section 13(k) of the Exchange Act.

[44] Service as an interim executive officer for a year or less, even if the director receives compensation of more than $120,000 for such service, does not constitute a per se bar to a finding of independence, but the board must nevertheless affirmatively determine that such service and the compensation received for such service would not interfere with the individual's ability to exercise independent judgment as a director. However, if while serving as interim executive officer the director participates in the preparation of the company's financial statements, then such director is barred from audit committee service for three years. Nasdaq IM-5605.

[45] A Nasdaq interpretation letter indicates that the three-year look back period for the director or family member's employment as an executive officer does not apply if the director or family member is no longer employed with the other company. Accordingly, the director is only precluded from serving as an independent director of the Nasdaq-listed company if he or she (or a family member) currently serves as an executive officer of another company of which a current executive officer of the Nasdaq-listed company served on the compensation committee during the past three years. Nasdaq Staff Interpretation Letter 2004-9.

[46] Payments arising solely from investments in the company's securities or under non-discretionary charitable contribution matching programs are not included in the limitation. Nasdaq Listing Rule 5605(a)(2). Note that only directors who *currently* have such a relationship are disqualified from independent status; if the director had such a relationship within the past three years but does not currently, he or she is not so disqualified.

[47] Nasdaq Listing Rule 5605(a)(2). Nasdaq also "encourages companies to consider other situations where a director or their family member and the company each have a relationship with the same charity when assessing director independence." Nasdaq IM-5605.

[48] Note that according to the NYSE, the three-year look-back period still applies in the context of a spin-off. For example, a director of the spin-off company could not be considered independent until at least three years post-spin if he or she was an executive officer or employee of the former parent company at the time of the spin-off.

[49] The term "consolidated group" refers to a company, its parent(s), and/or its subsidiary or subsidiaries that would be required under GAAP to prepare financial statements on a consolidated basis. NYSE FAQs, Section 3.C.

[50] Commentary to NYSE Listed Company Manual Section 303A.02(a).

[51] Nasdaq IM-5605.

[52] Nasdaq IM-5605.

[53] Disclosure Requirement of NYSE Listed Company Manual Section 303A.02(a).

[54] Nasdaq Listing Rule 5605(b)(1).

[55] Section 8 of the Clayton Act; 15 U.S.C. § 19. Prohibition and/or preapproval rules relating to interlocking directorates also apply to companies operating in certain industries, including:

- Certain financial companies – Dodd-Frank Section 164; Section 360 of the Depository Institutions Management Interlocks Act (12 U.S.C. Chapter 33)
- Certain public utilities – Section 306(b) of the Federal Power Act (16 U.S.C. § 825d(b)), Federal Energy Regulatory Commission Rules of Practice and Procedure, Part 45
- Certain communication carriers – Section 212 of the Communications Act of 1934 (47 U.S.C. § 212)
- Certain alcohol companies – Section 8 of the Federal Alcohol Administration Act (27 U.S.C. § 208)

[56] NYSE Listed Company Manual Section 303A.06.

[57] Nasdaq Listing Rule 5605(c)(2).

[58] NYSE Listed Company Manual Section 303A.07(a).

[59] Nasdaq Listing Rule 5605(c)(2)(A).

[60] Compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including any deferred compensation plan) for prior service with company, provided that such compensation is not contingent on continued service. Indirect compensation includes payments to spouses, minor children or stepchildren and children or stepchildren sharing a home with the audit committee member, as well as payments accepted by an entity which provides accounting, consulting, legal, investment banking or financial advisory services to the company and of which the audit committee member is a partner, member, an officer such as a managing director or an executive officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions). Other senior level positions, such as where the director is "of counsel" at a law firm that provides services to the company, may also be problematic. Exchange Act Rule 10A-3(e)(8).

[61] "Affiliate" or "affiliated person" is defined as "a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified." "Control" is defined as "possession, direct or indirect, of the power to direct or cause the direction of the management and policies

of a person, whether through the ownership of voting securities, by contract, or otherwise." An executive officer of an affiliate, a director who is also an employee of an affiliate, a general partner of an affiliate and a managing member of an affiliate are all deemed to be "affiliates." Under a "safe harbor" provision, a person who is not (a) an executive officer or (b) a shareholder owning 10 percent or more of any class of voting securities of a company is deemed not to control the company. Exchange Act Rule 10A-3(e)(1), (4). A director who has been designated by an affiliate (such as a significant shareholder) to serve on a board would not, without more, be prohibited from audit committee service. However, such a designee would likely not be independent for audit committee purposes if he or she is required to vote as directed by the affiliate (for example, pursuant to a shareholders agreement). Also exempt from the "affiliated person" requirement is an audit committee member that sits on the board of directors of both a listed issuer and an affiliate of the listed issuer, if the audit committee member otherwise meets the independence requirements for each of the issuer and the affiliate. Exchange Act Rule 10A-3(b)(1)(iv)(B). For example, a director should be able to sit on the audit committees of both a listed parent and a listed subsidiary. It is recommended that a company disclose in its annual meeting proxy statement (or, if the company does not file an annual meeting proxy statement, in its annual report) if any audit committee member has been determined by the company's board to be independent but falls outside of the safe harbor provisions of Rule 10A-3(e)(1)(ii).

[62] Exchange Act Rule 10A-3(b); NYSE Listed Company Manual Sections 303A.06, 303A.07(a). However, under Rule 10A-3(c)(2), at any time when a company has a class of common equity securities (or similar securities) that is listed on a national securities exchange, a direct or indirect consolidated subsidiary or an at least 50% beneficially owned subsidiary of such listed company need not meet these audit committee independence requirements -- even though such subsidiary is itself a listed company -- unless the subsidiary itself has a class of equity securities, other than non-convertible, non-participating preferred securities, so listed.

[63] Nasdaq Listing Rule 5605(c)(2)(A). A director who serves as an interim executive officer for less than a year may be considered independent but such a director cannot serve on the company's audit committee if, as an interim executive officer, he or she participated in the preparation of the company's financial statements within the past three years. Nasdaq IM-5605.

[64] Nasdaq Listing Rule 5605(c)(2)(B). *See also* SEC Regulation S-K Item 407(d)(2) relating to the nature of the relationship that makes the person not independent and the reasons for the board's determination.

[65] Commentary to NYSE Listed Company Manual Section 303A.06; Exchange Act Rule 10A-3(a)(3).

[66] Nasdaq Listing Rule 5605(c)(4). Companies are required to regain compliance by the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply, the company shall instead have 180 days from such event to regain compliance. This cure period may not be relied upon in addition to the cure period relating to failure to comply with independent audit committee requirements because of an audit committee member ceasing to be independent for reasons outside the audit committee member's reasonable control. *See also* Nasdaq Listing Rule 5810(c)(3)(E).

[67] A company is not eligible for the cure period immediately following the expiration of a phase-in period under Rule 5615(b) upon which the company was relying, unless the company (1) complied with the audit committee composition requirement during the phase-in period, and (2) fell out of compliance with the audit committee composition requirement after having complied with the requirement before the end of the phase-in period. In these circumstances, as provided in Rule 5615(b), the company will not be considered non-compliant with the requirement until the end of the phase-in period. For purposes of computing the applicable cure period, the event that caused the failure to comply shall be the event causing the company to fall out of compliance after having complied with the requirement, and not the end of the phase-in period. Nasdaq Listing Rule 5605(c)(4)(C).

[68] Exchange Act Rule 10A-3(d); SEC Regulation S-K, Item 407(d).

[69] Commentary to NYSE Listed Company Manual Section 303A.07(a).

[70] Nasdaq Listing Rule 5605(c)(2)(A).

[71] Nasdaq IM-5605-4.

[72] SOX § 407; SEC Regulation S-K Item 407(d)(5).

[73] Disclosure Requirement of NYSE Listed Company Manual Section 303A.07(a). If this disclosure is provided on a company website, the company must disclose in its proxy statement or annual report that it is including such disclosure on its website and provide the website address.

[74] NYSE Listed Company Manual Section 303A.06.

[75] Nasdaq Listing Rule 5605(c)(3).

[76] NYSE Listed Company Manual Section 314.

[77] Nasdaq Listing Rule 5630. For purposes of this rule, a "related person transaction" is one defined as such in SEC Regulation S-K Item 404 or, in the case of a non-U.S. issuer, a transaction required to be disclosed pursuant to Item 7.B. of Form 20-F.

[78] NYSE Listed Company Manual Section 303A.07(c). Listed companies must maintain an internal audit function to provide management and the audit committee with ongoing assessments of the listed company's risk management processes and system of internal control. A listed company may choose to outsource this function to a third party service provider other than its independent auditor. Commentary to NYSE Listed Company Manual Section 303A.07(c). Certain categories of newly listed companies must put an internal audit function in place within one year after listing. NYSE Listed Company Manual Section 303A.00.

[79] NYSE Listed Company Manual Section 303A.07(b)(i).

[80] Nasdaq Listing Rule 5605(c)(1).

[81] SOX § 806 prohibits companies from discharging, demoting or otherwise discriminating against any employee who provides information regarding conduct employee reasonably believes constitutes violation of securities or financial fraud laws (i) to any governmental authority, (ii) in any proceeding pending or about to be commenced concerning such violation or (iii) to any person with supervisory authority over the employee or authorized by company to investigate such conduct (e.g., audit committee; auditors; counsel engaged by committee). Dodd-Frank Section 929A amends SOX to clarify that its whistleblower protections apply not just to public company employees, but also to employees of public company's subsidiaries and other affiliates whose financial information is included in public company's consolidated financial statements. Regulation 21F under the Exchange Act implements the whistleblower bounty program and anti-retaliation provisions mandated by Dodd-Frank Section 922(a). *See* SEC Release No. 34-64545 (May 25, 2011). The SEC's whistleblower program is administered by the Office of the Whistleblower residing within the Division of Enforcement. Under this program, an eligible individual (but not a corporation or other entity) may receive a cash award from a special SEC fund ranging from 10% to 30% of the total amount of monetary sanctions, in excess of $1 million, recovered by the SEC in a civil judicial or administrative action. An eligible whistleblower also may receive a cash award based on monetary sanctions collected by other regulatory or law-enforcement authorities in a "related action," including fines and penalties imposed in a federal criminal prosecution brought by the U.S. Department of Justice. To recover, a whistleblower must "voluntarily" provide, in accordance with specific rules, "original information" about a violation of the federal securities laws that has occurred, is ongoing or is about to occur and that ultimately "leads to successful enforcement action." While previously the SEC could only offer financial incentives to whistleblowers in the area of insider trading, the whistleblower program provides bounties for information relating to any violation of the federal securities laws, including the Foreign Corrupt Practices Act.

[82] NYSE Listed Company Manual Section 303A.07(b)(iii).

[83] After reviewing this report and the independent auditor's work throughout the year, the audit committee will be in a position to evaluate the auditor's qualifications, performance and independence. This evaluation should include the review and evaluation of the lead partner of the independent auditor. In making its evaluation, the audit committee should take into account the opinions of management and the company's internal auditors (or other personnel responsible for the internal audit function). In addition to assuring the regular rotation of the lead audit partner as required by law, the audit committee should further consider whether, in order to assure continuing auditor independence, there should be regular rotation of the audit firm itself. The audit committee should present its conclusions with respect to the independent auditor to the full board. Commentary to NYSE Listed Company Manual Section 303A.07(b)(iii)(A).

[84] Meetings may be telephonic if permitted under applicable corporate law; polling of audit committee members, however, is not permitted in lieu of meetings. Commentary to NYSE Listed Company Manual Section 303A.07(b)(iii)(B).

[85] The audit committee's responsibility to discuss earnings releases, as well as financial information and earnings guidance, may be done generally (i.e., discussion of the types of information to be disclosed and the type of presentation to be made). The audit committee need not discuss in advance each earnings release or each instance in which a company may provide earnings guidance. Commentary to NYSE Listed Company Manual Section 303A.07(b)(iii)(C).

[86] While it is the job of the CEO and senior management to assess and manage the company's exposure to risk, the audit committee must discuss guidelines and policies to govern the process by which this is handled. The audit committee should discuss the company's major financial risk exposures and the steps management has taken to monitor and control such exposures. The audit committee is not required to be the sole body responsible for risk assessment and management, but the committee must discuss guidelines and policies to govern the process by which risk assessment and management is undertaken. Many companies, particularly financial companies, manage and assess their risk through mechanisms other than the audit committee. The processes these companies have in place should be reviewed in a general manner by the audit committee, but they need not be replaced by the audit committee. Commentary to NYSE Listed Company Manual Section 303A.07(b)(iii)(D).

[87] The audit committee must regularly review with the independent auditor any difficulties the auditor encountered in the course of the audit work, including any restrictions on the scope of the independent auditor's activities or on access to requested information, and any significant disagreements with management. Among the items the audit committee may want to review with the auditor are: any accounting adjustments that were noted or proposed by the auditor but were "passed" (as immaterial or otherwise); any communications between the audit team and the audit firm's national office respecting auditing or accounting issues presented by the engagement; and any "management" or "internal control" letter issued, or proposed to be issued, by the audit firm to the company. The review should also include discussion of the responsibilities, budget and staffing of the company's internal audit function. Commentary to NYSE Listed Company Manual Section 303A.07(b)(iii)(F).

[88] The audit committee should review with the full board any issues that arise with respect to the quality or integrity of the company's financial statements, the company's compliance with legal or regulatory requirements, the performance and independence of the company's independent auditors, or the performance of the internal audit function. Commentary to NYSE Listed Company Manual Section 303A.07(b)(iii)(H).

[89] NYSE Listed Company Manual Section 303A.07(b)(ii)-(iii). While the fundamental responsibility for the company's financial statements and disclosures rests with management and the independent auditor, the audit committee must review: (A) major issues regarding accounting principles and financial statement presentations, including any significant changes in the company's selection or application of accounting principles, and major issues as to the adequacy of the company's internal controls and any special audit steps adopted in light of material control deficiencies; (B) analyses prepared by management and/or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analyses of the effects of alternative GAAP methods on the financial statements; (C) the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of the company; and (D) the type and presentation of information to be included in earnings press releases (paying particular attention to any use of "pro forma," or "adjusted" non-GAAP, information), as well as review any financial information and earnings guidance provided to analysts and rating agencies. Commentary to NYSE Listed Company Manual Section 303A.07(b).

[90] Nasdaq Listing Rule 5605(c)(3).

[91] Nasdaq Listing Rule 5605(c)(1).

[92] NYSE Listed Company Manual Section 307.00.

[93] Website Posting Requirement and Disclosure Requirements of NYSE Listed Company Manual Section 303A.07(b). *See also* SEC Regulation S-K Item 407(d)(1).

[94] SEC Regulation S-K Item 407(d)(1).

[95] SOX § 202; Exchange Act § 10(h)-(i).

[96] NYSE Listed Company Manual Section 303A.00.

[97] Nasdaq Listing Rule 5615.

[98] To ensure that companies do not avoid the rules by simply not establishing a formal compensation committee, Exchange Act Rule 10C-1(c)(2) defines "compensation committee" to encompass (a) any other committee of the board of directors performing functions typically performed by a compensation committee and (b) the members of the board of directors who, in the absence of a formal committee, oversee executive compensation matters. The rule does not, however, apply to a committee that addresses only director compensation, so the typical nominating/corporate governance committee would not be subject to the heightened compensation committee independence standards. The SEC determined it was not necessary to require the exchanges to apply the listing standards related to the compensation committee's authority to retain compensation advisers or require funding for payment of such advisers to directors who oversee executive compensation matters outside of the formal committee structure since such directors already retain the powers of the board of directors in making executive compensation determinations. *See* SEC Release No. 33-9330, Listing Standards for Compensation Committees (June 20, 2012) at 12-13.

[99] NYSE Listed Company Manual Section 303A.05(a).

[100] Nasdaq Listing Rule 5605(d)(2)(A); Nasdaq IM-5605-6. Since the earlier of (i) the listed company's first annual meeting after January 15, 2014, or (ii) October 31, 2014, Nasdaq-listed companies have been required to comply with Nasdaq Listing Rule 5605(d)(2), which requires a Nasdaq-listed company to have a compensation committee of at least two members, each of whom must be an "Independent Director" as defined under Rule 5605(a)(2).

[101] Nasdaq Listing Rule 5605(d)(2)(A).

[102] The NYSE has not specifically defined "compensatory fees" for the purposes of NYSE Section 303A.02(a)(ii). NYSE companies will likely look to the definition of compensatory fees in Exchange Act Rule 10A-3(b)(1)(ii)(A) relating to the independence of audit committee members.

[103] NYSE Listed Company Manual Section 303A.02(a)(ii). Commentary to NYSE Listed Company Manual Section 303A.02(a).

[104] Nasdaq Listing Rule 5605(d)(2)(A); Nasdaq IM-5605-6.

[105] Nasdaq IM-5605-6.

[106] Nasdaq Listing Rule 5605(d)(2)(B). *See also* SEC Regulation S-K Item 407(a), Instruction 1.

[107] NYSE Listed Company Manual Section 303A.00.

[108] Nasdaq Listing Rule 5605(d)(4)(A). Companies are required to regain compliance by the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the failure to comply; provided, however, that if the annual shareholders meeting occurs no later than 180 days following the event that caused the failure to comply, the company shall instead have 180 days from such event to regain compliance. *See also* Nasdaq Listing Rule 5810(c)(3)(E).

[109] A company is not eligible for the cure period immediately following the expiration of a phase-in period under Rule 5615(b) upon which the company was relying, unless the company (1) complied with the compensation committee composition requirement during the phase-in period, and (2) fell out of compliance with the compensation committee composition requirement after having complied with the requirement before the end of the phase-in period. In these circumstances, as provided in Rule 5615(b), the company will not be considered non-compliant with the requirement until the end of the phase-in period. For purposes of computing the applicable cure period, the event that caused the failure to comply shall be the event causing the company to fall out of compliance after having complied with the requirement, and not the end of the phase-in period. Nasdaq Listing Rule 5605(d)(4)(B).

[110] In determining the long-term incentive component of CEO compensation, the committee should consider the listed company's performance and relative shareholder return, the value of similar incentive awards to CEOs at comparable companies, and the awards given to the listed company's CEO in past years. Discussions regarding CEO compensation with the board generally are not precluded, as it is not the intent to impair communication among board members. Commentary to NYSE Listed Company Manual Section 303A.05.

[111] All equity-compensation plans and any material revisions to the terms of such plans are subject to shareholder approval with limited exceptions. NYSE Listed Company Manual Section 303A.08. Nasdaq has a similar requirement. *See* Nasdaq Listing Rule 5635(c).

[112] This provision is not intended to preclude a board's ability to delegate its authority to approve non-CEO executive officer compensation to the compensation committee. Commentary to NYSE Listed Company Manual Section 303A.05.

[113] NYSE Listed Company Manual Section 303A.05(b)(iii).

[114] Commentary to NYSE Listed Company Manual Section 303A.05(b).

[115] Commentary to NYSE Listed Company Manual Section 303A.05(b).

[116] NYSE Listed Company Manual Section 303A.14; SEC Release No. 34-97688; File No. SR-NYSE-2023-12, Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Adopt New Section 303A.14 of the NYSE Listed Company Manual to Establish Listing Standards Related to Recovery of Erroneously Awarded Incentive-Based Executive Compensation (June 9, 2023). The SEC approved the NYSE clawback rules, which include an effective date of October 2, 2023. The deadline for adopting a clawback policy was December 1, 2023 (60 days after effective date).

[117] Nasdaq Listing Rules 5605(d)(1).

[118] Nasdaq Listing Rule 5608; SEC Release No. 34-97687; File No. SR-NASDAQ-2023-005, Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Establish Listing Standards

Related to Recovery of Erroneously Awarded Executive Compensation (June 9, 2023). The SEC approved the Nasdaq clawback rules, which include an effective date of October 2, 2023. The deadline for adopting a clawback policy was December 1, 2023 (60 days after effective date).

[119] Nasdaq Listing Rule 5605(d)(1).

[120] Website Posting Requirement and Disclosure Requirements of NYSE Listed Company Manual Section 303A.05. *See also* SEC Regulation S-K Item 407(e)(2).

[121] SEC Regulation S-K Item 407(e)(2).

[122] NYSE Listed Company Manual Section 303A.05(c).

[123] Commentary to NYSE Listed Company Manual Section 303A.05(c).

[124] Nasdaq Listing Rule 5605(d)(3).

[125] For all public companies, Nasdaq-listed as well as NYSE-listed, SEC Regulation S-K Item 407(e)(3)(iii) requires annual disclosure of whether a compensation consultant who determines or recommends the amount or form of executive or director compensation is engaged directly by the compensation committee (other than consultants that only provide specific types of non-customized or broad-based consulting services). In addition, information is required about certain other services provided by the compensation consultant to the company and the aggregate remuneration it received for all services provided, including whether such services were approved by the compensation committee, where the compensation consultant received more than $120,000 in the last fiscal year for its other services.

[126] SEC Regulation S-K Item 407(e)(3)(iv). Note that disclosure of *potential* conflicts of interest or the *appearance* of a conflict of interest is not required, nor is disclosure with respect to advisers other than compensation consultants. *See* SEC Release No. 33-9330, Listing Standards for Compensation Committees (June 20, 2012) at 79.

[127] NYSE Listed Company Manual Section 303A.00.

[128] NYSE Listed Company Manual Section 303A.00.

[129] Nasdaq Listing Rule 5615.

[130] Nasdaq Listing Rule 5605(d)(5); Nasdaq IM-5605-6.

[131] NYSE Listed Company Manual Section 303A.04(a).

[132] Nasdaq Listing Rule 5605(e).

[133] Nasdaq Listing Rule 5605(e)(3). *See also* SEC Regulation S-K Item 407(a), Instruction 1.

[134] Placing responsibility for new director and board committee nominations in the hands of an independent nominating/corporate governance committee can enhance the independence and quality of nominees. Commentary to NYSE Listed Company Manual Section 303A.04.

[135] NYSE Listed Company Manual Section 303A.04(b).

[136] Commentary to NYSE Listed Company Manual Section 303A.04.

[137] Commentary to NYSE Listed Company Manual Section 303A.04.

[138] *See* SEC Regulation 14A, Schedule 14A, Item 7(d)(2)(ii)(E).

[139] Nasdaq Listing Rule 5605(e)(2).

[140] Website Posting Requirement and Disclosure Requirements of NYSE Listed Company Manual Section 303A.04. *See also* SEC Regulation S-K Item 407(c)(2)(i).

[141] SEC Regulation S-K Item 407(c)(2)(i).

[142] Commentary to NYSE Listed Company Manual Section 303A.04.

[143] Nasdaq Listing Rule 5605(e)(4).

[144] Nasdaq IM-5605-7.

[145] NYSE Listed Company Manual Section 303A.00.

[146] Nasdaq Listing Rule 5615.

[147] *See* SEC Release No. 33-11216, Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure (July 26, 2023).

[148] *See* CFTC, Swap Transaction Compliance and Implementation Schedule: Clearing Requirement Under Section 2(h) of the CEA, 77 Fed. Reg. 44441 (July 30, 2012); CFTC, Clearing Requirement Determination Under Section 2(h) of the CEA, 77 Fed. Reg. 74283 (December 13, 2012).

[149] *See* SEC Release No. 34-63556, End-User Exception to Mandatory Clearing of Security-Based Swaps (December 15, 2010). On May 1, 2013, the SEC reopened the comment period until July 22, 2013. *See* SEC Release No. 34-69491, Reopening of Comment Periods for Certain Rulemaking Releases and Policy Statement Applicable to Security-Based Swaps Proposed Pursuant to the Securities Exchange Act of 1934 and the Dodd-Frank Wall Street Reform and Consumer Protection Act (May 1, 2013).

[150] CFTC, End-User Exception to the Clearing Requirement for Swaps, 77 Fed. Reg. 42560 (July 19, 2012) at 42569.

[151] Federal Reserve System Regulation YY, Docket No. 1438, Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies, 77 Fed. Reg. 593 (January 5, 2012).

[152] Dodd-Frank Section 165(h), as amended by the Economic Growth, Regulatory Relief, and Consumer Protection Act 2018.

[153] 12 C.F.R. Part 252. *See* Federal Reserve System Regulation YY, Docket No. 1438, Enhanced Prudential Standards for Bank Holding Companies and Foreign Banking Organizations, 79 Fed. Reg. 17240 (March 27, 2014); Federal Reserve System Regulations Q, Y, LL, PP and YY, Docket No. R-1658, Prudential Standards for Large Bank Holding Companies, Savings and Loan Holding Companies, and Foreign Banking Organizations, 84 Fed. Reg. 59032 (November 1, 2019).

[154] SEC Regulation S-K Item 406. While the SEC's rules do not explicitly require board oversight of this code of ethics, given the seniority of the officers involved and the subject matter, responsibility to adopt and oversee the code will usually be a board responsibility and often falls within the audit committee's responsibilities.

[155] SEC Regulation S-K Item 406(c).

[156] NYSE Listed Company Manual Section 303A.10. Many companies adopt one code of conduct and ethics that meets NYSE and SOX § 406 requirements; other companies adopt separate codes for NYSE and SOX § 406 purposes.

[157] Nasdaq Listing Rule 5610; Nasdaq IM-5610.

[158] NYSE Listed Company Manual Section 303A.10.

[159] Nasdaq Listing Rule 5610.

[160] Website Posting Requirement and Disclosure Requirements of NYSE Listed Company Manual Section 303A.10. *See also* SEC Regulation S-K Item 406(c).

[161] Nasdaq Listing Rule 5610.

[162] Item 5.05 of Form 8-K. Note, however, Forms 20-F and 40-F provide that a foreign private issuer may disclose any change to or waiver from the Code of Business Conduct and Ethics on a Form 6-K or its website.

[163] Disclosure Requirements of NYSE Listed Company Manual Section 303A.10.

[164] Nasdaq Listing Rule 5610.

[165] NYSE Listed Company Manual Section 303A.09.

[166] Website Posting Requirement and Disclosure Requirements of NYSE Listed Company Manual Section 303A.09.

[167] NYSE Listed Company Manual Section 303A.00.

[168] Nasdaq Listing Rule 5615.

[169] In the case of FPIs with a two-tier board system, the audit committee should be formed from the supervisory or non-management board of directors. *See* Exchange Act Rule 10A-3(e)(2).

[170] Item 16K(c) of Form 20-F. *See also* SEC Release No. 33-11216, Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure (July 26, 2023).

[171] NYSE Listed Company Manual Section 303A.00.

[172] Nasdaq Listing Rule 5615(a)(3). Note that foreign private issuer audit committees are not required to have at least three members. *See* Nasdaq Staff Interpretation Letter 2005-39, ID 886, published July 31, 2012.

[173] Nasdaq Listing Rule 5610.

[174] Exchange Act Rule 10A-3(b)(iv)(C)-(E) and Rule 10A-3(c)(3).

[175] Disclosure Requirement of NYSE Listed Company Manual Section 303A.11. If this disclosure is provided on a company website, the company must disclose in its proxy statement or annual report that it is including such disclosure on its website and provide the website address.

[176] Nasdaq Listing Rule 5615(a)(3).

[177] Nasdaq IM-5615-3.

[178] Dodd-Frank Section 952; Exchange Act Rule 10C-1(b)(1)(iii)(A)(4).

[179] Dodd-Frank Section 952; Exchange Act Rule 10C-1(b)(1)(iii)(A)(4).

[180] After the certification, companies only need to file an updated certification form if a change in the company's status results in the prior certification no longer being accurate. For example, if a company indicated on its certification that it was not subject to a requirement because it was a controlled company, that company must submit a new form if it ceases to be a controlled company. Similarly, a foreign private issuer that relied on an exemption in its certification would have to file a new certification if the company ceased to be a foreign private issuer. Nasdaq Corporate Governance Frequently Asked Questions, Notifications and Forms, ID 400, "FAQ: Are listed companies required to submit a certification of compliance with Nasdaq's corporate governance rules?," *available at* https://listingcenter.nasdaqomx.com/Material_Search.aspx?cid=16&mcd=LQ.

[181] NYSE Listed Company Manual Section 303A.12(b).

[182] Nasdaq Listing Rule 5625.

[183] NYSE Listed Company Manual Section 303A.12(c). NYSE corporate governance affirmation forms are available at https://www.nyse.com/regulation/nyse.

[184] NYSE Listed Company Manual Section 303A.12(c). A Domestic Company Section 303A Interim Written Affirmation must be filed upon the occurrence of one of the following events: (a) a director who was deemed independent is no longer independent; (b) a director who was not deemed independent is deemed independent; (c) a director has been added to or has left the company's board (note that according to the NYSE, a director who does not stand for re-election has not "left" the board, so this event does not need to be reported on an Interim Written Affirmation unless the company would be non-compliant with any of the NYSE board structure requirements); (d) the composition of the audit, nominating/corporate governance, or compensation committee (or any other committee to which the duties of the nominating/governance or compensation committee has been delegated) has changed; (e) the company or a member of its audit committee is eligible to rely on and is choosing to rely on an Exchange Act Rule 10A-3 exemption, or is no longer relying on such an exemption; (f) a member of the compensation committee is relying on the cure period for compensation committee independence noncompliance provided for in Section 303A.00; (g) the company is no longer or has become a controlled company for purposes of Section 303A of the NYSE Listed Company Manual; (h) the company is no longer or has become a smaller reporting company for purposes of Section 303A of the NYSE Listed Company Manual; or (i) the company no longer qualifies as a foreign private issuer.

[185] NYSE Listed Company Manual Section 303A.13. Delisting procedures are governed by Chapter 8 of the NYSE Listed Company Manual.

[186] Nasdaq Listing Rules 5250(b)(2) and 5810(b) require each company that receives a deficiency notification to describe in its public disclosure each specific basis and concern identified by Nasdaq in reaching its determination that the company did not meet the listing standard. Additionally, Nasdaq is permitted to make a public announcement of the deficiency notification. The imposition of sanctions is governed by Nasdaq Listing Rules 5805 through 5840.

[187] NYSE Listed Company Manual Section 303A.00.

[188] NYSE Listed Company Manual Section 303A.00.

[189] Nasdaq Listing Rules 5615(b).

[190] NYSE Listed Company Manual Section 303A.00; Nasdaq Listing Rule 5615(b)(1). In general, for NYSE and Nasdaq purposes, a company is considered to be listing in connection with its IPO if, immediately prior to listing, it did not have a class of common stock registered under the Exchange Act. However, for purposes of audit committee composition rules, the company will not be considered to be listed in connection with an IPO if, immediately prior to listing, it was required to file reports under the Exchange Act.

[191] NYSE Listed Company Manual Section 303A.00; Nasdaq Listing Rule 5615(b)(4).

[192] NYSE Listed Company Manual Section 303A.00; Nasdaq Listing Rule 5615(b)(2).

[193] NYSE Listed Company Manual Section 303A.00; Nasdaq Listing Rule 5615(b)(3)(A).

[194] NYSE Listed Company Manual Section 303A.00; Nasdaq Listing Rule 5615(b)(3)(B).

[195] NYSE Listed Company Manual Section 303A.00; Nasdaq Listing Rule 5615(b)(7).

[196] NYSE Listed Company Manual Section 303A.00; Nasdaq Listing Rule 5615(b)(6).

[197] NYSE Listed Company Manual Section 303A.00; Nasdaq Listing Rule 5615(b)(5).