

## **Audit Committee Checklist and Compliance Timeline**

In light of recent events, audit committees are expected to play a more active role than ever in monitoring the integrity of company financial statements, overseeing a company's relationship with and monitoring the independence of its outside auditor, and monitoring the company's internal controls and compliance with legal and regulatory requirements. Set forth below is a checklist outlining actions that companies and audit committees should consider to position the audit committee to meet its increased responsibilities under the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley") and the implementing rules promulgated by the Securities and Exchange Commission ("SEC"), and the listing standards of the New York Stock Exchange ("NYSE") and the Nasdaq Stock Market, Inc. ("NASDAQ"). Companies were required to have audit committees that comply with the new listing standards by the earlier of their first annual meeting after January 15, 2004, or October 31, 2004. Amendments to the NYSE listing standards, including some amendments that impact audit committees, took effect on November 3, 2004 (with a transition period where applicable). Under the SEC rules and applicable listing standards, companies also must make additional disclosures, which are discussed below.

### ***Independence.***

- Consider whether audit committee members meet independence requirements and examine relationships of, and compensation paid to, audit committee members.
  - Audit committee members may not receive any fees (other than for service as a director and fixed amounts of compensation under a retirement plan, including deferred compensation, for prior service with the company), including consulting and advisory fees from the company or its subsidiaries, regardless of the amount. (Sarbanes-Oxley §301; Rule 10A-3(b)(1)(ii) under the Securities Exchange Act of 1934 (the "Exchange Act"); NYSE Rule 303A.06; NASDAQ Rule 4350(d)(2)(A)(ii)) The NYSE and NASDAQ listing standards incorporate the requirements of Exchange Act Rule 10A-3 by reference. (NYSE Rule 303A.06; NASDAQ Rule 4350(d)(2)(A)(ii)) The NYSE intends to apply Rule 10A-3 in a manner consistent with the guidance in the SEC's release adopting this rule. (Commentary to NYSE Rule 303A.06)
    - The SEC's rules under Section 301 of Sarbanes-Oxley prohibit audit committee members from receiving direct and indirect payments of consulting, advisory and other compensatory fees from the company or any of its subsidiaries. Indirect payments include payments to: (1) a spouse, minor child or stepchild of, or a child or stepchild sharing a home with, an audit committee member; and (2) an entity in which the audit committee member is: (i) a partner or a member; (ii) an officer occupying a position comparable to a partner or member (such as a managing director); (iii) an executive officer; or (iv) in a position similar to any of the foregoing (excluding limited partners, non-managing members and others who have no active role in providing

services to the entity) and that provides accounting, consulting, legal, investment banking, or financial advisory services to the company. (Exchange Act Rule 10A-3(e)(8)) The SEC indicated in the adopting release that other commercial relationships between a company and an entity with which an audit committee member has a relationship are not covered by the SEC's rule on indirect compensatory fees. The SEC also clarified in the adopting release that the rule only applies to current relationships with audit committee members.

- Audit committee members may not be an "affiliated person" of the company or any of its subsidiaries. (Sarbanes-Oxley §301; Exchange Act Rule 10A-3(b)(1)(ii)(B); NYSE Rule 303A.06; NASDAQ Rule 4350(d)(2)(A)(ii)) The NYSE and NASDAQ listing standards incorporate the requirements of Exchange Act Rule 10A-3 by reference. (NYSE Rule 303A.06; NASDAQ Rule 4350(d)(2)(A)(ii))
  - The definition of "affiliated person" in the SEC's rules under Section 301 is consistent with current SEC definitions, under which an "affiliate" of an issuer is "a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, [the] issuer." (Exchange Act Rule 10A-3(e)(1)(i) and (e)(4)) The definition of "affiliated person" includes a safe harbor under which a person who is not an executive officer and is not a greater than 10% stockholder is not deemed to control the issuer. The rules also provide that the safe harbor does not create a presumption that a person exceeding the 10% threshold controls or is otherwise an affiliate of another person. (Exchange Act Rule 10A-3(e)(1)(ii)) NASDAQ recommends that companies disclose in their proxy statements if a director is deemed independent but falls outside the safe harbor. (NASDAQ Interpretive Material ("IM")-4350-4)
- In addition to the requirements of Exchange Act Rule 10A-3, each audit committee member must be an independent director. (NYSE Rule 303A.07(b); NASDAQ Rule 4350(d)(2)(A)(i))
  - Under the NYSE listing standards, for a director to be deemed "independent," the board must affirmatively determine that the director has no material relationship with the company (either directly or as a partner, stockholder or officer of an organization that has a relationship with the company). (NYSE Rule 303A.02(a)) In addition, a director is not independent if:
    - The director is, or has been within the last three years, an employee of the company, or an immediate family member of the director is, or has been within the last three years, an executive officer of the company. (NYSE Rule 303A.02(b)(i))

- The director has received, or has an immediate family member who has received, during any 12-month period during the last three years, more than \$100,000 in direct compensation from the company (other than director and committee fees, and pension or other forms of deferred compensation for prior service). Compensation received by an immediate family member for service as an employee (other than an executive officer) of the company need not be considered in determining independence under this standard. (NYSE Rule 303A.02(b)(ii))
- (1) The director, or an immediate family member of the director, is a current partner of the company's internal or external auditor; (2) the director is a current employee of the company's internal or external auditor; (3) an immediate family member of the director is a current employee of the company's internal or external auditor who participates in the firm's audit, assurance or tax compliance (but not tax planning) practice; or (4) the director, or an immediate family member of the director, was within the last three years (but is no longer) a partner or employee of the company's internal or external auditor and personally worked on the company's audit within that time.
- The director, or an immediate family member of the director, is, or has been within the last three years, employed as an executive officer of another company where any of the listed company's present executive officers serves or served at the same time on that company's compensation committee. (NYSE Rule 303A.02(b)(iv))
- The director is a current executive officer or employee, or an immediate family member of the director is a current executive officer, of another company that has made payments to, or received payments from, the listed company for property or services in an amount that, in any of the last three fiscal years, exceeds the greater of \$1 million or 2% of the other company's consolidated gross revenues. Under this standard, payments to the listed company from a director's company and payments from the listed company to a director's company must be separately compared against the consolidated gross revenues of the director's company for the same year. (NYSE Rule 303A.02(b)(v))

Although contributions to charitable organizations are not considered "payments" for purposes of this standard, commentary to the independence standards reminds boards of their obligation to consider the materiality of relationships between directors and non-profit organizations that receive corporate contributions. The standards also require companies to disclose in their annual proxy statements any contributions made to a non-profit organization where a director serves as an executive officer if, during the past three years, contributions in any one year exceeded \$1 million or 2% of the organization's

consolidated gross revenues. (Commentary to NYSE Rule 303A.02(b)(v))

- Under the NASDAQ listing standards, an "independent director" means a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship that, in the opinion of the company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. (NASDAQ Rule 4200(a)(15)) The board has a responsibility to make an affirmative determination that no such relationships exist through the application of Rule 4200. (NASDAQ IM-4200) In addition, the following directors will not be considered independent:
  - A director who is, or during the past three years was, employed by the company or by any parent or subsidiary of the company. (NASDAQ Rule 4200(a)(15)(A))
  - A director who accepts (or whose family member accepts) any payments from the company or any parent or subsidiary of the company in excess of \$60,000, during any period of 12 consecutive months within the three years preceding the determination of the director's independence, other than: (1) compensation for board service; (2) payments arising solely from investments in the company's securities; (3) compensation paid to a family member who is a non-executive employee of the company or a parent or subsidiary of the company; (4) benefits under a tax qualified retirement plan or non-discretionary compensation; (5) loans from a financial institution, provided that the loans were made in the ordinary course of business, on substantially the same terms (including interest rates and collateral) as those prevailing at the time for comparable transactions with the general public, did not involve more than a normal degree of risk or other unfavorable factors, and were not otherwise subject to disclosure under Item 404 of Regulation S-K; (6) payments from a financial institution in connection with the deposit of funds or the financial institution acting in an agency capacity, provided that the payments were made in the ordinary course of business, on substantially the same terms as those prevailing at the time for comparable transactions with the general public, and were not otherwise subject to disclosure under Item 404 of Regulation S-K; and (7) loans permitted under Sarbanes-Oxley. (NASDAQ Rule 4200(a)(15)(B))
  - A director who is (or whose family member is) a partner in, or a controlling stockholder or executive officer of, an organization, including a non-profit entity, if the company made payments to, or received payments from, the organization for property or services in the current fiscal year or any of the past three fiscal years, that exceeded the greater of \$200,000 or five percent of either the

company's or the organization's gross revenues for that year, other than payments arising solely from investments in the company's securities and payments under non-discretionary charitable contribution matching programs. NASDAQ encourages boards to consider other situations where a director or a director's family member and the company each have a relationship with the same non-profit organization in assessing director independence. (NASDAQ Rule 4200(a)(15)(D) and IM-4200))

- A director who is (or whose family member is) an executive officer of another entity where, at any time during the past three years, any of the company's executive officers served on that entity's compensation committee. (NASDAQ Rule 4200(a)(15)(C))
  - A director who has a family member that is, or has been within the past three years, an executive officer of the company or any parent or subsidiary of the company. (NASDAQ Rule 4200(a)(15)(E))
  - A director who is (or whose family member is) a current partner of the outside auditor, or who was a partner or employee of the outside auditor and worked on the company's audit engagement within the past three years. (NASDAQ Rule 4200(a)(15)(F))
- The NASDAQ listing standards also provide that an audit committee member must not have participated in the preparation of the financial statements of the company or any current subsidiary of the company at any time during the past three years. (NASDAQ Rule 4350(d)(2)(A)(iii))
- Effective date: Companies were required to have audit committees that comply with the listing standards by the earlier of their first annual meeting after January 15, 2004, or October 31, 2004. Amendments to the NYSE listing standards that took effect on November 3, 2004 changed the bright-line director independence standard on affiliations with a listed company's auditor, and the NYSE has provided a transition period that gives companies until their first annual meeting after June 30, 2005 to remedy any independence issues that arise as a result of this change. Minor changes to NASDAQ's director independence standard on compensatory payments in excess of \$60,000 (including the addition of two exclusions relating to ordinary-course loans and payments from financial institutions) took effect June 29, 2004.

***Financial expertise.***

- Disclose whether or not the audit committee has at least one "financial expert" (as defined by the SEC) and if not, why not. (Sarbanes-Oxley §407)
  - Under the SEC's rules implementing Section 407, an issuer must disclose in its Form 10-K whether or not (and if not, why not) it has at least one "audit committee financial expert" serving on the audit committee, and if so, the

name of the expert and whether the expert is independent, as independence for audit committee members is defined in the listing standards applicable to the issuer. (Item 10 of Form 10-K; Item 401(h) of Regulation S-K) The determination of whether an individual qualifies as an "audit committee financial expert" must be made by the full board of directors.

- The definition of "audit committee financial expert" in the SEC's final rules is less restrictive than that initially proposed by the SEC and expands the pool of individuals who may qualify as an "audit committee financial expert." The SEC's final rules define an "audit committee financial expert" as a person who has:
  - an understanding of GAAP and financial statements;
  - the ability to assess the general application of GAAP in connection with the accounting for estimates, accruals, and reserves;
  - experience: (1) preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to those that the issuer's financial statements can reasonably be expected to raise; or (2) actively supervising individuals engaged in these activities;
  - an understanding of internal controls and procedures for financial reporting; and
  - an understanding of audit committee functions.
- The "audit committee financial expert" must have acquired these attributes through:
  - education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor, or experience in a position that involves the performance of similar functions;
  - experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor, or person performing similar functions;
  - 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 (a brief listing of which must be included as part of the company's disclosure).

Because the SEC's rules permit an individual to acquire the mandatory attributes through experience "actively supervising" others, the rules make it possible for some CEOs to qualify as "audit committee financial experts." The SEC's adopting release emphasizes, however, that "active supervision" means that the supervisor participates in, and contributes to, the process of addressing the same types of financial and accounting issues addressed by the individuals being supervised.

- The SEC's rules include a safe harbor, clarifying that an "audit committee financial expert" will not be deemed an "expert" for any purpose. The safe harbor also clarifies that the designation of an individual as an "audit committee financial expert" does not: (1) impose any greater duties, obligations or liabilities than the individual would otherwise have as a member of the audit committee and board of directors; or (2) affect the duties, obligations or liabilities of other members of the audit committee or the board. (Item 401(h) of Regulation S-K)
- NYSE listing standards continue to require that at least one audit committee member have "accounting or related financial management expertise," and NASDAQ listing standards continue to require that at least one committee member have "financial sophistication." (Commentary to NYSE Rule 303A.07(a); NASDAQ Rule 4350(d)(2)(A)(iv)) An "audit committee financial expert" may be presumed to satisfy these requirements. (Commentary to NYSE Rule 303A.07(a); NASDAQ IM 4350-4)
- Determine that each audit committee member is able to read and understand financial statements at the time he or she joins the committee, rather than within a reasonable time after joining (as required under current listing standards). (NASDAQ Rule 4350(d)(2)(A)(iv))
- Effective date: Under the SEC's rules, disclosures about the "audit committee financial expert" must be provided for fiscal years ending on or after July 15, 2003.

***Service on audit committees.***

- If an audit committee member simultaneously serves on the audit committees of more than three public companies, and an NYSE-listed company does not limit the number of audit committees on which its directors may serve to three or less, then *in each case*, the board must determine that the audit committee member's simultaneous service would not impair his or her ability to effectively serve on the listed company's audit committee. This determination must be disclosed in the company's proxy statement. (Commentary to NYSE Rule 303A.07(a))
- The NASDAQ listing standards do not contain an analogous requirement.
- Effective date: NYSE companies were required to comply by the earlier of their first annual meeting after January 15, 2004, or October 31, 2004. The related disclosure

of the board's determination is required in proxy statements dated after the applicable 2004 compliance date.

***Audit committee responsibilities; mandatory charter provisions for listed companies.***

- Review audit committee charter to assess whether it incorporates specific responsibilities mandated by Sarbanes-Oxley, the NYSE and NASDAQ.
- The audit committees of NYSE-listed companies must include in their charters the committee's purpose, which, at a minimum, must be to prepare the report included in the annual proxy statement and to assist in board oversight of:
  - the integrity of the company's financial statements;
  - the company's compliance with legal and regulatory requirements;
  - the outside auditor's qualifications and independence; and
  - the performance of the company's internal audit function and of the outside auditor. (NYSE Rule 303A.07(c)(i))
- Audit committees of NYSE-listed companies also must perform a number of responsibilities that must be set forth in the audit committee's charter, including those responsibilities required by Exchange Act Rule 10A-3(b)(2), (3), (4) and (5). (NYSE Rule 303A.07(c)(ii) and (iii)) Specifically, the audit committee must:
  - be directly responsible, in its capacity as a committee of the board, for the appointment, retention, compensation, and oversight of the work of the outside auditor, as required by Exchange Act Rule 10A-3(b)(2) (discussed separately below);
  - establish procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, as well as for confidential, anonymous submissions by listed company employees of concerns regarding questionable accounting or auditing matters, as required by Exchange Act Rule 10A-3(b)(3) (discussed separately below);
  - obtain and review, at least annually, a report by the outside auditor describing: (1) the audit firm's internal quality control procedures; (2) any material issues raised by the most recent internal quality control review or peer review of the audit firm, or by any investigation by governmental or professional authorities within the last five years, regarding any independent audit carried out by the firm, and any steps taken to address these issues; and (3) all relationships between the auditor and the company;
  - meet to review and discuss the annual audited financial statements and quarterly financial statements with management and the outside auditor, including reviewing the company's specific MD&A disclosures;

- discuss earnings press releases, and financial information and earnings guidance provided to analysts and rating agencies (discussed separately below);
  - have the authority, without seeking board approval, to obtain advice and assistance from outside legal, accounting or other advisors, and receive appropriate funding for the compensation of such advisors, as required by Exchange Act Rule 10A-3(b)(4) and (5) (discussed separately below);
  - discuss policies with respect to risk assessment and risk management (discussed separately below);
  - meet separately, periodically, with management, the internal auditor and the outside auditor (discussed separately below);
  - review with the independent auditor any difficulties the auditor encountered in the course of its audit work (including any restrictions on the scope of the auditor's activities or on access to information, and any significant disagreements with management) and management's response;
  - set clear hiring policies for employees or former employees of the outside auditor that are consistent with Sarbanes-Oxley, which prohibits an auditing firm from providing audit services to a company whose CEO, CFO or chief accounting officer (or any person serving in an equivalent position) was employed by the auditing firm and participated in the company's audit in any capacity within one year of audit initiation (Sarbanes-Oxley §206);
    - Under the SEC's rules implementing Section 206, an accounting firm is not independent with respect to an issuer if the lead partner, concurring partner, or any other member of the audit engagement team who provides more than 10 hours of audit, review or attest services for the issuer accepts a position with the issuer in a "financial reporting oversight role" within one year prior to the commencement of audit procedures for the year that included employment by the issuer of the former member of the audit engagement team. An individual has a "financial reporting oversight role" if the individual has direct responsibility for oversight over those who prepare a company's financial statements and related information included in SEC filings. (Rule 2-01(c)(2)(iii)(B) of Regulation S-X)
  - report regularly to the board of directors; and
  - undertake an annual evaluation of the audit committee's effectiveness. (NYSE Rule 303A.07(c)(ii) and (iii))
- Audit committee charters of companies traded on NASDAQ must specify the audit committee's purpose of overseeing the company's accounting and financial reporting processes and the audits of the financial statements, and set forth the responsibilities

and authority necessary to comply with Exchange Act Rule 10A-3(b)(2), (3), (4) and (5) regarding:

- the authority to appoint and oversee the outside auditor (discussed separately below);
  - the establishment of procedures for complaints regarding accounting, internal accounting controls or auditing matters (discussed separately below);
  - the authority to engage outside advisors (discussed separately below); and
  - funding, as determined by the audit committee. (NASDAQ Rule 4350(d)(1)(D) and 4350(d)(3))
- Effective dates:
    - The SEC rules implementing Section 206 of Sarbanes-Oxley (hiring of former audit personnel) are effective for employment relationships that commenced on or after May 6, 2003.
    - Companies were required to comply with the listing standards by the earlier of their first annual meeting after January 15, 2004, or October 31, 2004. Amendments to the NYSE listing standards that require audit committees to "meet to review" and discuss a company's financial statements, including "reviewing the company's specific" MD&A disclosures, took effect November 3, 2004.

***Periodic private sessions with management and internal and outside auditors.***

- Conduct private sessions, periodically, with the internal and outside auditors and with management. Include a requirement for periodic private sessions in the audit committee charter. (NYSE Rule 303A.07(c)(iii)(E))
- The NASDAQ listing standards do not contain an analogous requirement.
- Effective date: NYSE companies were required to comply by the earlier of their first annual meeting after January 15, 2004, or October 31, 2004.

***"Direct responsibility" for the outside auditor.***

- Make the audit committee "directly responsible" for the appointment, compensation, retention and oversight of the work of the outside auditor. (Sarbanes-Oxley §301; Exchange Act Rule 10A-3(b)(2); NYSE Rule 303A.07(c)(iii); NASDAQ Rule 4350(d)(3)(i))
  - The SEC's release adopting rules under Section 301 indicates that the audit committee's oversight responsibilities include the authority to retain and

terminate the outside auditor, and ultimate authority to approve all audit engagement fees and terms.

- Include in the audit committee charter a provision that gives the audit committee authority to appoint and dismiss, oversee, and determine funding for the outside auditor. (NYSE Rule 303A.07(c)(iii); NASDAQ Rule 4350(d)(1)(D) and 4350(d)(3)(i))
- Effective date: Companies were required to comply by the earlier of their first annual meeting after January 15, 2004, or October 31, 2004.

***Services provided by the outside auditor.***

- Review non-audit services currently provided by the outside auditor to determine whether any of these services are prohibited under Sarbanes-Oxley and the SEC's implementing rules. (See Sarbanes-Oxley §201) The SEC rules include a list of non-audit services that, if provided to an audit client, would impair an auditor's independence. Sarbanes-Oxley also prohibits any other services that the Public Company Accounting Oversight Board ("PCAOB") determines, by regulation, are impermissible. Under SEC rules, services that impair an auditor's independence include:
  - bookkeeping and other services related to the company's accounting records or financial statements;
  - financial information systems design and implementation;
  - appraisal or valuation services, fairness opinions and contribution-in-kind reports;
  - actuarial services;
  - internal audit outsourcing services;
  - management functions;
  - human resources;
  - broker-dealer, investment adviser or investment banking services; and
  - legal services; and
  - expert services unrelated to the audit performed for the purpose of advocating an audit client's interests in litigation or in a regulatory or administrative proceeding or investigation. (Rule 2-01(c)(4) of Regulation S-X)
    - The SEC rules contain limited exceptions within some of these restrictions on non-audit services. The SEC has clarified that auditors

may continue to provide tax compliance, tax planning and tax advice to audit clients, subject to audit committee pre-approval (discussed below). The SEC's adopting release states, however, that an auditor's independence would be impaired if it represented an issuer before a tax court, district court or federal court of claims. The SEC also stated that audit committees should scrutinize carefully the retention of an accountant in a transaction initially recommended by the accountant if the sole business purpose of the transaction may be tax avoidance and the tax treatment may be not supported in the Internal Revenue Code and related regulations.

- On July 26, 2005, the PCAOB adopted rules on tax services that would treat an auditor as not independent of an audit client if the auditor: (1) plans, markets, or opines in favor of, certain types of aggressive tax transactions; (2) provides tax services to an audit client for a contingent fee; or (3) provides tax services to individuals who perform a "financial reporting oversight role" (as defined by SEC rules) at an audit client, other than directors, and to family members of individuals in a financial reporting oversight role. The PCAOB's rules include several transition provisions and, in any event, must be approved by the SEC before they take effect. (PCAOB Release No. 2005-014)
- Adopt policies governing audit committee pre-approval of all audit and permitted non-audit services to be provided by the outside auditor. (Sarbanes-Oxley §202)
  - The SEC's rules implementing Section 202 provide that audit and non-audit services may be pre-approved either:
    - on an engagement-by-engagement basis; or
    - pursuant to pre-approval policies and procedures established by the audit committee, provided that: (1) the policies and procedures are detailed as to the particular service; (2) the audit committee is informed on a timely basis of each such service; and (3) the policies and procedures do not include the delegation of audit committee responsibilities to management. (Rule 2-01(c)(7) of Regulation S-X)
  - The audit committee also may delegate authority to grant pre-approvals to one or more of its members, provided that the pre-approvals are reported to the full committee at each of its scheduled meetings. (Sarbanes-Oxley §202)
  - As part of its rules on tax services (discussed above), the PCAOB has adopted a rule designed to supplement the SEC's pre-approval requirements. The PCAOB's rule expands the responsibilities of the outside auditor in connection with the process of obtaining audit committee pre-approval of permitted tax services. Specifically, the PCAOB rule requires that the auditor: (1) describe in writing to the audit committee the nature and scope of each proposed tax

service, including the fee structure for the engagement; (2) discuss with the audit committee the potential effects of the proposed tax service on the auditor's independence; and (3) document the auditor's discussion with the audit committee. In addition, the auditor must disclose to the audit committee any amendments, written or unwritten, to tax services engagements. The PCAOB's rules include several transition provisions and, in any event, must be approved by the SEC before they take effect. (PCAOB Release No. 2005-014)

- Disclose pre-approval policies in 10-Ks and proxy statements. (Sarbanes-Oxley §202; Item 14 of Form 10-K; Item 9(e)(5) of Schedule 14A)
  - The SEC's rules contemplate that companies will incorporate the proxy disclosure by reference into their 10-Ks. Companies have the option of including a copy of their policies and procedures or providing "clear, concise and understandable descriptions."
  - The SEC's rules also amended the proxy disclosure rules relating to fees paid by companies to their outside auditors. The amended rules require disclosure of fees in four categories: (1) Audit Fees; (2) Audit-Related Fees; (3) Tax Fees; and (4) All Other Fees. The required fee disclosures must cover the past two fiscal years (previously, SEC rules only required disclosure relating to the past fiscal year). (Item 14 of Form 10-K; Items 9(e)(1)-(4) of Schedule 14A)
- Effective dates: The SEC rules implementing Section 201 of Sarbanes-Oxley (prohibited non-audit services) took effect May 6, 2003, but contracts in existence on May 6, 2003 to provide non-audit services prohibited under the rules were grandfathered until May 6, 2004. The SEC rules implementing Section 202 of Sarbanes-Oxley (pre-approval) took effect May 6, 2003, and engagements entered into prior to May 6, 2003 to provide non-audit services had to be completed by May 6, 2004 (whether or not they were pre-approved by the audit committee). Disclosure of pre-approval policies and the fee disclosures was required beginning with the first fiscal year ending after December 15, 2003.

***Rotation of outside auditor.***

- Assure regular rotation of the lead and concurring audit partners, and other significant audit partners, as required by Section 203 of Sarbanes-Oxley. Consider whether, in order to assure continuing independence, there should be regular rotation of the outside auditor. (Commentary to NYSE Rule 303A.07(c)(iii)(A))
  - The SEC's rules implementing Section 203 require the lead audit and concurring partners to rotate off the audit engagement after five years, with a five-year time-out period. Certain other significant audit partners are subject to a seven-year rotation requirement, followed by a two-year time-out period. (Rule 2-01(c)(6) of Regulation S-X)

- Effective dates: For lead partner, effective for issuer's first fiscal year ending after May 6, 2003. For concurring partner, effective for issuer's second fiscal year ending after May 6, 2003. In determining whether the lead and concurring partner must rotate, time served prior to May 6, 2003 is included. For other partners, effective as of beginning of first fiscal year after May 6, 2003. That year constitutes the first year of service in determining time served for purposes of the rotation requirement.

***Complaints and concerns about accounting and auditing matters.***

- Develop procedures for the submission of complaints and concerns about accounting and auditing matters. These procedures must address: (1) the receipt, retention, and treatment of complaints received by the company about accounting, internal accounting controls and auditing matters; and (2) the confidential, anonymous submission of employee concerns about questionable auditing or accounting matters. (Sarbanes-Oxley §301; Exchange Act Rule 10A-3(b)(3); NYSE Rule 303A.07(c)(iii); NASDAQ Rule 4350(d)(3)(ii))
- Include in the audit committee charter a requirement that the committee establish such procedures and periodically receive reports regarding the status and treatment of complaints submitted through the procedures. (NYSE Rule 303A.07(c)(iii); NASDAQ Rule 4350(d)(1)(D) and 4350(d)(3)(ii))
- Effective date: Companies were required to comply by the earlier of their first annual meeting after January 15, 2004, or October 31, 2004.

***Outside advisors.***

- The audit committee must have authority to retain outside advisors and must receive appropriate funding from the company, as determined by the committee, to compensate outside advisors. (Sarbanes-Oxley §301; Exchange Act Rule 10A-3(b)(4) and (5); NYSE Rule 303A.07(c)(iii); NASDAQ Rule 4350(d)(3)(iii))
- Include in the audit committee charter a provision that gives the audit committee authority, without seeking board approval, to obtain advice from outside advisors, and to provide funding to compensate such advisors. (NYSE Rule 303A.07(c)(iii); NASDAQ Rule 4350(d)(1)(D) and 4350(d)(3)(iii))
- Effective date: Companies were required to comply by the earlier of their first annual meeting after January 15, 2004, or October 31, 2004.

***CEO and CFO certifications – disclosure controls and procedures.***

- Review with the CEO and CFO how they are meeting their obligations under the certification requirements of Sections 302 and 906 of Sarbanes-Oxley, and review the CEO's and CFO's evaluations of the company's disclosure controls and procedures.

- In its rules implementing the Section 302 certification requirements, the SEC developed the concept of "disclosure controls and procedures," which are defined in Rule 13a-15(e) to include controls and other procedures designed to ensure that information required to be disclosed in a company's Exchange Act reports is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. The Section 302 certification also addresses "internal control over financial reporting" (discussed separately below).
- As implemented by the SEC, the portion of the Section 302 certification addressing disclosure controls and procedures must state that the CEO and CFO:
  - are responsible for establishing and maintaining disclosure controls and procedures;
  - have designed the company's disclosure controls and procedures, or caused the disclosure controls and procedures to be designed under their supervision, to ensure that material information about the company, including its consolidated subsidiaries, is made known to them by others within those entities, particularly during the period in which the 10-Q or 10-K is being prepared; and
  - have evaluated the effectiveness of the company's disclosure controls and presented in the 10-Q or 10-K their conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by the 10-Q or 10-K, based on their evaluation. (Exchange Act Rule 13a-14(a); Item 601(b)(31) of Regulation S-K)

The last prong of the certification is a change from the SEC's original rules implementing Section 302, which required that the evaluation of disclosure controls and procedures take place as of a date within 90 days prior to the filing date of the 10-Q or 10-K.

- The SEC rules implementing Section 302 also require that companies maintain adequate disclosure controls and procedures, evaluate their effectiveness (with the participation of the CEO and CFO) as of the end of each fiscal quarter, and include in their 10-Ks and 10-Qs disclosures about the conclusions reached by the CEO and CFO following their evaluation of the company's disclosure controls and procedures. (Exchange Act Rules 13a-15(a) and (b); Item 9A of Form 10-K; Item 4 of Form 10-Q; Item 307 of Regulation S-K)
- Effective dates: Section 906 certification, July 30, 2002. SEC rules under Section 302, August 29, 2002. For calendar-year companies, the certifications discussed above on disclosure controls and procedures were required beginning with the 10-Q for the third quarter of 2002. Effective August 14, 2003, the SEC amended its rules

to require that the evaluation of disclosure controls and procedures be conducted as of the end of the period covered by the 10-Q or 10-K and changed the corresponding provision of the certification to reflect this requirement.

☑ ***CEO and CFO certifications – internal control over financial reporting.***

- Review with the CEO and CFO how they are meeting their obligations under the certification requirements of Sections 302 and 906 of Sarbanes-Oxley and provide for the CEO and CFO to disclose to the audit committee and the outside auditor: (1) all significant deficiencies and material weaknesses in the design or operation of "internal control over financial reporting" that are reasonably likely to adversely affect the company's ability to record, process, summarize and report financial data; and (2) any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal control over financial reporting.
  - Under Section 302 of Sarbanes-Oxley, as implemented by the SEC, the CEO and CFO certification must indicate that the CEO and CFO have made the disclosures in (1) and (2) above to the audit committee and outside auditor. (Exchange Act Rule 13a-14(a); Item 601(b)(31) of Regulation S-K; Item 9A of Form 10-K; Item 4 of Form 10-Q) On June 5, 2003, in connection with the publication of its final rules implementing Section 404 of Sarbanes-Oxley, the SEC amended its rules on internal controls and the corresponding provisions of the Section 302 certification. Under the amended rules, companies must maintain "internal control over financial reporting" and the CEO and CFO certifications must include a statement that the CEO and CFO: (1) are responsible for establishing and maintaining internal control over financial reporting; and (2) have designed the company's internal control over financial reporting, or caused it to be designed under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP. (Exchange Act Rule 13a-15(a); Exchange Act Rule 13a-14(a); Item 601(b)(31) of Regulation S-K)
  - The SEC has adopted a definition of "internal control over financial reporting," which is defined as a process designed by, or under the supervision of, the CEO and CFO and effected by the board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and includes those policies and procedures that:
    - pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the company;

- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of the issuer are being made only in accordance with authorizations of the company's management and directors; and
  - provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the company's assets that could have a material effect on the financial statements. (Exchange Act Rule 13a-15(f))
- Review with the outside auditor and management steps that the company is taking to review and assess its internal control over financial reporting in anticipation of filing the first "internal control report of management" required under Sarbanes-Oxley.
  - Section 404 of Sarbanes-Oxley requires that each annual report required to be filed with the SEC contain an "internal control report" of management setting forth management's assessment of the effectiveness of the company's internal control over financial reporting as of the end of the most recent fiscal year, and that the outside auditor attest to and report on management's assessment in accordance with standards issued by the PCAOB. Under the SEC's rules implementing Section 404, management must evaluate, with the participation of the CEO and CFO, the effectiveness of the company's internal control over financial reporting as of the end of each fiscal year and companies must include in their annual reports a report of management on the company's internal control over financial reporting. (Exchange Act Rule 13a-15(c); Item 9A of Form 10-K; Item 308(a) of Regulation S-K) The report must include:
    - a statement that management is responsible for establishing and maintaining adequate internal control over financial reporting;
    - a statement identifying the framework used by management to evaluate the effectiveness of the company's internal control over financial reporting;
    - management's assessment of the effectiveness of the company's internal control over financial reporting as of the end of the company's most recent fiscal year, including disclosure of any material weaknesses in the company's internal control over financial reporting identified by management; and
    - a statement that the outside auditor has issued an attestation report on management's assessment of the company's internal control over financial reporting, which must be filed as part of the annual report. (Items 308(a) & (b) of Regulation S-K)

Management is not permitted to conclude that the company's internal control over financial reporting is effective if there are one or more material weaknesses. (Item 308(a)(3) of Regulation S-K) Management's evaluation must be based on a suitable, recognized control framework established by a body that has followed due process procedures, including the distribution of the framework for public comment. (Exchange Act Rule 13a-15(c)) Although the SEC indicated in the release adopting its rules under Section 404 that the *Internal Control – Integrated Framework* developed by the Committee of Sponsoring Organization of the Treadway Commission satisfies the SEC's criteria and may be used as an evaluation framework, the SEC specifically declined to mandate the use of a particular framework and left room for the possibility that other bodies, such as the Public Company Accounting Oversight Board, may develop other frameworks in the future.

- The outside auditor's attestation report must clearly state the auditor's opinion as to whether management's assessment is fairly stated in all material respects or must include an opinion to the effect that an overall opinion cannot be expressed, along with the reasons why. (Item 308(b) of Regulation S-K; Rules 1-02(a)(2) and 2-02(f) of Regulation S-X)
  - On June 17, 2004, the SEC approved the PCAOB's Auditing Standard No. 2 (*An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of Financial Statements*). Auditing Standard No. 2 provides the standards for the outside auditor to attest to, and report on, management's assessment of the effectiveness of internal control over financial reporting.
  - Under Auditing Standard No. 2, the outside auditor's attestation report must include two opinions: an opinion as to whether management's assessment is fairly stated and an opinion as to whether the company has maintained effective internal control over financial reporting.
  - As part of the outside auditor's evaluation of a company's control environment, Auditing Standard No. 2 requires that the auditor evaluate the audit committee's oversight of the company's external financial reporting and internal control over financial reporting. (Auditing Standard No. 2, paragraphs 55-59)
- Review and discuss any significant changes in internal control over financial reporting.
  - The SEC's rules under Section 302 also require CEOs and CFOs to certify that they have indicated in the 10-K or 10-Q whether or not any changes in internal control over financial reporting occurred during the most recent fiscal quarter that have materially affected, or are reasonably likely to materially affect, the company's internal control over financial reporting. (Exchange Act Rule 13a-14(a); Item 601(b)(31) of Regulation S-K; Item 9A of Form 10-K;

Item 4 of Form 10-Q; Item 308(c) of Regulation S-K) The rules also require management, with the participation of the CEO and CFO, to evaluate any changes in internal control over financial reporting that occurred during the quarter that have materially affected, or are reasonably likely to materially affect, internal control over financial reporting. (Exchange Act Rule 13a-15(c))

- The commentary to the NYSE's rules states that the audit committee must review major issues as to the adequacy of the company's internal controls and any special audit steps adopted in light of material control deficiencies. (General Commentary to NYSE Rule 303A.07(c))
- Effective dates:
  - Section 906 certification, July 30, 2002. SEC rules under Section 302, August 29, 2002. For calendar-year companies, the certifications discussed above on internal controls were required beginning with the 10-Q for the third quarter of 2002.
  - The SEC rules implementing Section 404 (requiring inclusion of internal control report in company's annual reports) include a transition period so that domestic listed companies that satisfy the SEC's accelerated-filer requirements must include an internal control report of management in their 10-Ks for fiscal years ending on or after November 15, 2004. On March 2, 2005, the SEC extended the July 15, 2005 compliance deadline for all other companies by one year, so domestic companies that are not accelerated filers must provide an internal control report beginning with their fiscal years ending on or after July 15, 2006.
  - Beginning with the first annual report that contains an internal control report of management, companies must include in their certifications the statements that the CEO and CFO are responsible for establishing and maintaining internal control over financial reporting and that they have designed the company's internal control over financial reporting, or caused it to be designed under their supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP.
  - The amended rules requiring disclosure of material changes in internal control over financial reporting and inclusion of the corresponding certification language took effect August 14, 2003, although the substantive requirement to conduct quarterly evaluations of changes to internal control over financial reporting is not effective until the first quarterly report due after the first annual report that must include an internal control report of management.

***Earnings releases, and financial information and earnings guidance provided to analysts and rating agencies.***

- Discuss earnings releases, and financial information and earnings guidance provided to analysts and ratings agencies. Include provision in the audit committee charter indicating that the audit committee is responsible for conducting discussions of earnings releases and guidance. (NYSE Rule 303A.07(c)(iii)(C))
  - The audit committee may have a general discussion of the types of information to be disclosed and the type of presentation to be made. It need not discuss each earnings release in advance or each circumstance in which the company provides earnings guidance. (Commentary to NYSE Rule 303A.07(c)(iii))
- The NASDAQ listing standards do not contain an analogous requirement.
- On January 15, 2003, the SEC approved final rules implementing Section 409 of the Sarbanes-Oxley Act. The rules require issuers to furnish on Form 8-K all releases or announcements disclosing material non-public financial information about completed annual or quarterly fiscal periods within five business days after dissemination. (Item 12 of Form 8-K) This time period was shortened to four business days on August 23, 2004 as a result of amendments to the SEC's 8-K rules that took effect on that date. (General Instruction B.1 to Form 8-K)
- Effective dates:
  - The SEC's rules apply to releases and announcements made after March 28, 2003.
  - NYSE companies were required to comply by the earlier of their first annual meeting after January 15, 2004, or October 31, 2004.

***Risk assessment and risk management policies.***

- Discuss the company's risk assessment and risk management policies. Include provision in the audit committee charter indicating that the audit committee is responsible for discussing the company's risk assessment and risk management policies. (NYSE Rule 303A.07(c)(iii)(D))
- Some companies have delegated responsibility for risk oversight to committees other than the audit committee. The commentary to the NYSE listing standards indicates that companies may manage risk through mechanisms other than the audit committee, but that a company's processes for managing and assessing risk should be reviewed in a general manner by the audit committee. (Commentary to NYSE Rule 303A.07(c)(iii)(D))
- The NASDAQ listing standards do not contain an analogous requirement.

- Effective date: NYSE companies were required to comply by the earlier of their first annual meeting after January 15, 2004, or October 31, 2004.

***Related party transactions.***

- Conduct an appropriate review, on an ongoing basis, of all related party transactions for potential conflict-of-interest situations. The audit committee (or another independent body of the board of directors) must review and approve all related party transactions. The term "related party transaction" refers to transactions required to be disclosed under Item 404 of Regulation S-K. (NASDAQ Rule 4350(h))
- The NYSE listing standards do not contain an analogous requirement.
- Effective date: January 15, 2004.

***Critical accounting policies, significant accounting judgments and estimates, off-balance sheet transactions and non-GAAP financial measures.***

- Receive report from the outside auditor on, among other things, critical accounting policies and alternative treatments of financial information that have been discussed with management. (Sarbanes-Oxley §204)
  - Although Section 204 of Sarbanes-Oxley applies to auditing firms rather than audit committees, members of the audit committee should make sure that they understand the company's critical accounting policies, internal controls, off-balance sheet financing and related party transactions.
  - The SEC rules implementing Section 204 require the outside auditor to report to the audit committee, prior to the filing of the audit report with the SEC, on:
    - all critical accounting policies and practices to be used;
    - all alternative accounting treatments of financial information within GAAP related to material items that have been discussed with management, including the ramifications of the use of alternative treatments and the treatment preferred by the outside auditor; and
    - other material written communications between the outside auditor and management. (Rule 2-07 of Regulation S-X)
  - Although the SEC's rules do not require that these communications be in writing, the SEC has indicated that it expects that the outside auditor and audit committee will document the communications. In addition, although the communications must, at a minimum, occur during the annual audit, the SEC expects that they could occur as frequently as quarterly or on a real-time basis.

- Review:
  - major issues regarding accounting principles and financial statement presentations, including any significant changes in the company's selection or application of accounting principles; and
  - analyses prepared by management and/or the outside auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of financial statements, including analyses of the effects on the financial statements of alternative GAAP methods, regulatory and accounting initiatives and off-balance sheet structures. (General Commentary to NYSE Rule 303A.07(c))
- Disclose whether the audit committee has discussed with senior management, with respect to each critical accounting estimate included in the company's MD&A, the development and selection of the accounting estimate, and the MD&A disclosure about the estimate.
  - The SEC has proposed new MD&A rules that would require companies to include disclosure about critical accounting estimates in their MD&A and to include in their MD&A, for each critical accounting estimate, a statement as to whether or not the company's senior management has discussed with the audit committee the development and selection of the accounting estimate, and the MD&A disclosure about the estimate.
- On January 22, 2003, the SEC approved final rules implementing Section 401(a) of the Sarbanes-Oxley Act. The rules require disclosure about off-balance sheet arrangements that either have, or are "reasonably likely" to have, a material current or future effect on an issuer's financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources. Companies must provide the disclosure in a separately captioned subsection of the MD&A. (Item 303(a)(4) of Regulation S-K) The rules also require issuers to provide an overview in their 10-Ks, in tabular format, of specified known contractual obligations. (Item 303(a)(5) of Regulation S-K)
- On January 15, 2003, the SEC approved final rules implementing Section 401(b) of the Sarbanes-Oxley Act. The rules place conditions on the use of non-GAAP financial measures. Specifically:
  - The SEC adopted Regulation G, which apply whenever an issuer publicly discloses or releases material information that includes a non-GAAP financial measure. Regulation G prohibits material misstatements or omissions that would make the presentation of the non-GAAP financial measure misleading, under the circumstances in which it is made. In addition, Regulation G requires a quantitative reconciliation of the differences between the non-GAAP financial measure presented and the most directly comparable GAAP financial measure.

- The SEC also adopted amendments to Item 10 of Regulation S-K to establish parameters on the use of non-GAAP financial measures in SEC filings. The amendments to Item 10 require issuers using non-GAAP financial measures in SEC filings to provide: (1) a presentation, with equal or greater prominence, of the most directly comparable financial measure calculated and presented in accordance with GAAP; (2) a reconciliation (by schedule or other clearly understandable method), of the differences between the non-GAAP financial measure with the most directly comparable financial measure or measures calculated and presented in accordance with GAAP; (3) a statement disclosing the reasons why the issuer's management believes that presentation of the non-GAAP financial measure provides useful information to investors about the issuer's financial condition and results of operations; and (4) to the extent material, a statement disclosing the additional purposes, if any, for which the issuer's management uses the non-GAAP financial measure that are not otherwise disclosed. The SEC also created a carve-out so that prohibitions on the use of certain non-GAAP financial measures do not prevent use of EBITDA.
- Effective date:
  - The SEC rules implementing Section 204 (outside auditor reports to the audit committee) took effect May 6, 2003.
  - Companies must comply with the disclosure requirements relating to off-balance sheet arrangements for fiscal years ending on or after June 15, 2003. The table of contractual obligations must be provided for fiscal years ending on or after December 15, 2003.
  - Regulation G (on the use of non-GAAP financial measures) applies to all disclosures containing non-GAAP financial measures made on or after March 28, 2003, and the amendments to Item 10 of Regulation S-K apply for fiscal periods ending after March 28, 2003.
  - Compliance with NYSE Rule 303A.07(c) (increased audit committee responsibilities) was required by the earlier of the first annual meeting after January 15, 2004, or October 31, 2004.
  - The SEC's MD&A rule proposals are pending.

***Codes of conduct for directors, officers and employees.***

- Pursuant to the audit committee's responsibility for legal compliance, review codes of conduct applicable to directors, officers and employees and disclose any waivers of the code for executive officers and directors. (NYSE Rule 303A.10)
  - NYSE-listed companies must adopt and disclose a code of business conduct and ethics for directors, officers, and employees. The code must require that any waivers for directors or executive officers can be made only by the board

or a board committee and that such waivers be promptly disclosed to stockholders, and the code must contain compliance standards and procedures reasonably designed to provide prompt and consistent action against violations. Each company's website must include its code and the company must state in its proxy statement that the code is available on the website and in print to any stockholder who requests it. (NYSE Rule 303A.10 and commentary)

- Disclose whether or not the company has adopted a code of ethics for its senior financial officers – principal financial officer, comptroller or principal accounting officer – and if not, why not. (Sarbanes-Oxley §406)
  - Under the SEC rules implementing Section 406, companies must disclose whether or not they have adopted a code of ethics for their principal executive officer and their senior financial officers – principal financial officer, comptroller or principal accounting officer or persons performing similar functions – and if not, why not. (Item 10 of Form 10-K; Item 406 of Regulation S-K)
  - Under the SEC rules, a "code of ethics" must be reasonably designed to deter wrongdoing and to promote:
    - honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships;
    - full, fair, accurate, timely, and understandable disclosure in reports and documents that a company files with, or submits to, the Commission and in other public communications made by the company;
    - compliance with applicable governmental laws, rules and regulations;
    - the prompt internal reporting to an appropriate person or persons identified in the code of violations of the code; and
    - accountability for adherence to the code.
  - The rules provide flexibility by permitting adoption of a separate code addressing the required elements or the inclusion of these elements in a code that has broader application. Companies that include the required elements in a broader document may satisfy the disclosure requirement by disclosing the portions of the document that meet the definition of "code of ethics" and that apply to the CEO and senior financial officers. However, under the NYSE listing standards, companies must post their codes of conduct in full on their websites. (Commentary to NYSE Rule 303A.10) NASDAQ listing standards (discussed below) also require that companies' codes of conduct be publicly available.

- Companies that have a code of ethics, as defined in the SEC's rules, must make that code (or the portions applicable to the CEO and senior financial officers) publicly available by: (1) filing the code (or relevant portions) as an exhibit to the Form 10-K; (2) posting the code (or relevant portions) on the company website; or (3) providing a copy of the code without charge upon request. Companies that post their codes on their websites or undertake to provide copies on request must indicate in their Form 10-K that they intend to provide disclosure in this manner.
- Companies must disclose any changes to, or waivers from, provisions of their code of ethics by filing a Form 8-K or posting the information on the company website within four days of the amendment or waiver. Only amendments or waivers relating to the required elements of the code of ethics and the specified officers must be disclosed.
- Companies traded on NASDAQ must adopt a code of conduct applicable to all directors, officers, and employees that complies with the definition of "code of ethics" in Section 406 of Sarbanes-Oxley and any SEC implementing rules. Companies may adopt one or more codes, provided that all directors, officers and employees are subject to a code that meets the definition of "code of ethics." The code must be publicly available. In addition, the code must contain an enforcement mechanism that provides for prompt and consistent enforcement, protection for persons reporting questionable conduct, clear and objective compliance standards and a fair process by which to determine violations. Any waivers of the code for executive officers and directors may be made only by the board and must be promptly disclosed to stockholders, along with the reasons for the waiver. Disclosure must be made on a Form 8-K within four business days of the waiver. (General Instruction B.1 to Form 8-K) Unlike the SEC's rules under Section 406 of Sarbanes-Oxley, NASDAQ listing standards do not permit website disclosure of waivers. (NASDAQ Rule 4350(n) and IM-4350-7)
- Effective dates:
  - The disclosures required by the SEC rules implementing Section 406 about whether a company has a code of ethics must be provided for fiscal years ending on or after July 15, 2003. Disclosure of amendments to, and waivers from, the code must be provided on or after the date on which a company files its first annual report in which disclosure about the code of ethics was required.
  - NYSE companies were required to comply by the earlier of their first annual meeting after January 15, 2004, or October 31, 2004. The NYSE-mandated disclosures (posting the code on the company website and disclosing the code's availability) are required in documents dated after the applicable 2004 compliance date. Amendments to the NYSE listing standards that require companies to provide disclosure about the availability of the code in their proxy statements (rather than the 10-K, as previously required) took effect

November 3, 2004. The NASDAQ listing standards on codes of ethics took effect May 4, 2004.

*Annual evaluation of the audit committee.*

- Undertake an annual self-evaluation to assess the effectiveness of the audit committee. Include a requirement for an annual self-evaluation in the audit committee charter. (NYSE Rule 303A.07(c)(ii))
- The NASDAQ listing standards do not contain an analogous requirement.
- Effective date: NYSE companies were required to comply by the earlier of their first annual meeting after January 15, 2004, or October 31, 2004.