

**NYSE AMENDS CERTAIN LISTED COMPANY
CORPORATE GOVERNANCE REQUIREMENTS**

December 23, 2009

The Securities and Exchange Commission (“SEC”) recently approved amendments to the New York Stock Exchange LLC (“NYSE”) listed company corporate governance rules that clarify certain disclosure requirements and coordinate some disclosure requirements with applicable SEC rules.¹ The new rules, which were adopted in substantially the form proposed by the NYSE, will take effect on January 1, 2010. Some of the key changes include the following:

- Current rules require that listed companies promptly notify the NYSE in writing after any executive officer becomes aware of any *material* non-compliance with the corporate governance listing standards. The new rules require notification when any executive officer becomes aware of *any* such non-compliance.
- The new rules eliminate each disclosure requirement currently included in Section 303A of the NYSE Listed Company Manual (which contains the corporate governance requirements) that is also required by Item 407 of Regulation S-K, the SEC disclosure rule regarding corporate governance matters. The new rules incorporate directly the applicable SEC disclosure requirements under Item 407. For instance, the new rules eliminate the concept of NYSE categorical independence standards and instead mandate compliance with the more demanding SEC rules, which require a company to disclose which directors had relationships that fall into categorical standards used by the board in determining independence. Additionally, whereas current rules require a listed company’s compensation and audit committees to include in their charters a requirement to produce committee reports, the new rules require these committees to prepare the disclosure required for such committee reports under Item 407. Listed companies thus should exercise care to confirm that their disclosures comply with Item 407’s requirements, since deficient disclosures could subject the company to NYSE sanctions for noncompliance with NYSE rules.
- Current rules require listed companies to hold regular meetings of “non-management directors” and recommend that listed companies schedule a meeting of independent directors at least once a year. Because “non-management directors” may include directors who do not meet NYSE independence standards, some companies have had to hold separate annual sessions of both “non-management directors” and independent directors. The new rules clarify that holding regular executive sessions of independent directors (the preference expressed by some companies) satisfies the original intention of the rule. The new rules also clarify that all interested parties, not just shareholders, must be able to communicate their concerns regarding the listed company to the presiding director, or the non-management or independent directors as a group.

¹ The SEC release approving the rule changes is available at: <http://www.sec.gov/rules/sro/nyse/2009/34-61067.pdf> (November 25, 2009). The release also discusses the application of the NYSE corporate governance rules in the IPO, bankruptcy and other contexts. Our client alert regarding the NYSE proposals may be found at: <http://www.wcsr.com/resources/pdfs/cs092809.pdf>.

- Current rules require listed companies to disclose in their annual proxy statements or annual reports that hard copies of applicable committee charters, corporate governance guidelines and code of business ethics and conduct are available in print upon request. The new rules permit a listed company merely to disclose in the applicable filing that copies of the relevant documents are available on the listed company’s website (and provide the listed company’s website address).
- Current rules require listed companies to make certain disclosures described below in their annual proxy statements or annual reports. The new rules permit a listed company to make the disclosures on or through its website (and require companies to disclose such fact in the applicable SEC filing and provide the website address). These disclosures include:
 - Under certain conditions, contributions made by the listed company to any tax exempt organization in which any independent director serves as an executive officer;
 - The identity of the director chosen to preside at an executive session of non-management or independent directors, or the procedure by which a presiding director is selected for each executive session (if the same individual is not the presiding director at every meeting);
 - The method for interested parties to communicate directly with the presiding director or non-management or independent directors as a group; and
 - The board’s determination that the service of any audit committee member on more than three public company audit committees does not impair the ability of such member to serve effectively on the listed company’s audit committee.
- Current rules require that listed companies disclose that they filed the CEO certification required with respect to the NYSE’s corporate governance listing standards (and any certifications required by the SEC) in the following year’s annual report. The new rules eliminate this disclosure requirement—meaning that the certification would be filed, but listed companies would not need to include the disclosure in their annual reports.
- Current rules require listed companies to disclose promptly any waiver of the code of business conduct and ethics granted to executive officers and directors. The new rules require disclosure by distribution of a press release, website disclosure or filing a Form 8-K with the SEC, in each case within four business days of any board determination to grant a waiver.

The NYSE’s actions against a noncompliant company can range from attaching a below compliance (“BC”) indicator to the listed company’s ticker symbol to issuing a public reprimand letter and, in extreme cases, delisting. In order to comply with the new requirements, listed companies should consider certain actions, including the following:

- Review committee charters and other corporate governance documents, director and officer questionnaires and proxy disclosures to determine the scope of revisions that will be required in these documents;
- Review internal reporting procedures to make sure executive officers report *any* non-compliance to the CEO;
- Review disclosure controls and procedures related to reporting waivers of the code of business conduct and ethics;
- Consider whether to maintain and publish categorical independence standards (which may continue to be useful to the board without regard to specific NYSE requirements); and

- Consider whether to use their websites (rather than annual reports or proxy statements) for certain disclosures.²

Contact Information

If you have any questions regarding the changes to the NYSE corporate governance listing standards, please contact Christopher J. Gyves (www.wcsr.com/ChristopherGyves) or Sudhir N. Shenoy (www.wcsr.com/SudhirShenoy), the principal drafters of this client alert, or you may contact the Womble Carlyle attorney with whom you usually work or one of our Corporate and Securities attorneys at the following link: <http://www.wcsr.com/profSearch?team=corporateandsecurities>.

Womble Carlyle client alerts are intended to provide general information about significant legal developments and should not be construed as legal advice regarding any specific facts and circumstances, nor should they be construed as advertisements for legal services.

IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).

² See our earlier client alert on the SEC's guidance regarding company websites available at <http://www.wcsr.com/resources/pdfs/cs080608.pdf> (August 6, 2008).