



Business Roundtable

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September 29, 2004

Mr. Jonathan G. Katz
Secretary
U.S. Securities and Exchange Commission
450 Fifth Street N.W.
Washington, D.C. 20549-0609

**Re: *File No. SR-NYSE-2004-41; Release No. 34-50298
Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and
Amendment No. 1 Thereto by the New York Stock Exchange, Inc. to Amend
Section 303A of the NYSE Listed Company Manual Relating to Corporate
Governance***

Dear Mr. Katz:

This letter is submitted on behalf of Business Roundtable, an association of chief executive officers of leading corporations with a combined workforce of more than 10 million employees in the United States and \$4 trillion in revenues. We appreciate the opportunity to provide our views on the New York Stock Exchange (NYSE) proposals to amend its corporate governance listing standards. Business Roundtable applauds these proposals, and in particular, the NYSE's effort to provide definitive clarification about common interpretive issues by reflecting its guidance on these issues in the text and commentary of the listing standards. Business Roundtable's comments on two aspects of the proposals are set forth below.

1. Affiliations with listed company auditors

Business Roundtable supports the NYSE's proposed amendments to the bright-line director independence standard on affiliations with a listed company's auditor. The amended standard would specify in greater detail the types of relationships that preclude a director from being independent and would apply the narrower definition of family member used in the independence standards for audit committee members.

Business Roundtable believes that these amendments are appropriate because they focus on those relationships that have the potential to impact a director's independence. In addition, the enumeration of specific relationships in the text of the standard will provide greater clarity to listed companies in applying the standard and will harmonize the NYSE standard with analogous standards of other securities markets. Because the current standard is so broadly drafted, it reaches a wide range of individuals, including individuals who never

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worked on the listed company's audit. For example, under the existing standard, a listed company director would no longer be considered independent if the director's brother marries an individual employed in a professional capacity at the listed company's outside auditor, even if the individual never had any involvement in the company's audit. This result is problematic. The consequences of a relationship with a listed company's auditor are severe because the relationship can result in the loss of a director's independence, and therefore, the director's ability to serve on the three key board committees. In addition, the pool of accounting firms with the necessary expertise and resources to audit the financial statements of large, multinational companies is limited, which means that listed companies have limited options when selecting an auditor. At the same time, the amended standard proposed by the NYSE would still reach those family member relationships that are the most likely to impact a director's independence.

Similarly, Business Roundtable believes that the proposed language addressing current employment of directors' family members at a listed company's auditor should be revised so that a family member's employment relationship precludes independence only in situations where the family member has personally worked on the company's audit within the last three years. As proposed, the amended standard would extend to any circumstances where a family member who is an employee "participates in the firm's audit, assurance or tax compliance (but not tax planning) practice," even if the family member never has any involvement in the company's audit. We believe that this modification would be consistent with the goal of focusing on relationships that are most likely to impact a director's independence. It also would harmonize the NYSE standard with the analogous standard adopted by the NASDAQ Stock Market, Inc., which covers directors' family members who are current partners of the outside auditor, or were partners or employees of the outside auditor and worked on the company's audit during the past three years.

2. Audit committee responsibilities

The proposed amendments also would require that the audit committee "meet to review and discuss" the listed company's annual and quarterly financial statements with management and the outside auditor, and that the committee "review" the company's "specific" Management's Discussion and Analysis of Financial Condition and Results of Operation ("MD&A") disclosures. The proposals would not affect the existing requirement that the audit committee "discuss" the listed company's earnings releases, or the commentary stating that the committee need not discuss each earnings release in advance and can instead discuss generally the types of information to be disclosed in earnings releases.

Business Roundtable believes that a company's audit committee should play an active role in overseeing the company's financial reporting and related disclosures, including the disclosures in MD&A and earnings releases. However, the NYSE's proposed language changes raise questions about the distinction, if any, between the extent of the audit committee's responsibility for reviewing the content of MD&A and earnings releases. Specifically, the changes could be read to suggest that the audit committee should have greater involvement in reviewing MD&A disclosures relative to earnings releases. We do not believe that this suggestion accurately reflects the current practices of audit committees, many of which, consistent with emerging best practices, review individual earnings releases prior to publication. Accordingly, Business Roundtable believes that additional clarification regarding the nature of the audit committee's responsibility for reviewing MD&A disclosures and earnings releases is appropriate, and that the proposed amendments should be modified to remove any implication that the audit committee has a greater degree of responsibility for MD&A disclosures. In this regard, we believe that the current language requiring that the audit committee

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“discuss” the financial statements, “including the company’s disclosures under [MD&A],” and that the committee “discuss” earnings releases, is sufficiently specific as to the nature of the audit committee’s responsibility, but flexible enough to allow for differences in audit committee practices. We also believe that the word “specific” should be deleted from the proposed amendments because it is not clear what is meant by the requirement that the audit committee “review[] the company’s specific disclosures” under MD&A.

Thank you for considering our comments. Please do not hesitate to contact Thomas Lehner at Business Roundtable at (202) 872-1260 if we can provide you with further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Odland". The signature is written in a cursive, flowing style.

Steve Odland
Chairman, President & CEO
AutoZone, Inc.
Chairman, Corporate Governance Task Force
Business Roundtable

cc: Hon. William H. Donaldson, Chairman, U.S. Securities and Exchange Commission
Hon. Paul S. Atkins, Commissioner
Hon. Roel C. Campos, Commissioner
Hon. Cynthia A. Glassman, Commissioner
Hon. Harvey J. Goldschmid, Commissioner