

Text of the Proposed Rule Changes

Additions are underscored. Deletions are [bracketed].

The proposed changes to Rules 5.3(k)(4) and 5.3(n) will become operative on July 1, 2013. Consequently, the existing text of these sections will remain in the Rulebook through June 30, 2013 and will be removed immediately thereafter. Upon approval of this filing, the amended versions of those sections will also be included in the Rulebook, with introductory text indicating that the revised text does not become operative until July 1, 2013. The rule text in this Exhibit 5 is marked to show how the rule text that will become operative on July 1, 2013, differs from the current rule text.

NYSE Arca Equities Rules 5.3(k).

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(4) *Compensation Committee.*

The following is the operative text of NYSE Arca Equities Rule 5.3(k)(4) through June 30, 2013:

Listed companies must have a compensation committee composed entirely of independent directors, except that if such committee is made up of three or more individuals, then one member of the committee need not be an independent director. The director who is not independent may not be a current officer or employee or immediate family member of an officer or employee. Such individual may be appointed to the Compensation Committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the proxy statement for the next annual meeting subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. The member appointed under this exception may not serve for longer than two years.

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Rule 5.3(n). Listed Foreign Private Issuers

The following is the operative text of NYSE Arca Equities Rule 5.3(n) through June 30, 2013:

Listed foreign private issuers must disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under the Corporation's listing standards. Listed foreign private issuers must comply with the provisions of Rule 5.3(k)(5). Listed foreign private issuers may provide this disclosure either on their web site (provided it is in the English language and accessible from the United States) and/or in their annual report as distributed to shareholders in the United States (again, in the English language). If the disclosure is only made available on the web site, the annual report shall so state and provide the web address at which the information may be obtained.

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NYSE Arca Equities Rules

Rule 5.3(k). Independent Directors/Board Committees

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(4) Compensation Committee.

The following will be the operative text of NYSE Arca Equities Rules 5.3(k)(4) effective commencing July 1, 2013:

(i) (a) Compensation Committee Composition. Listed companies must have a compensation committee composed entirely of independent directors[, except that].

(b) Accommodation Applicable to Smaller Reporting Companies. Solely in the case of an issuer that satisfies the definition of smaller reporting company in Exchange Act Rule 12b-2, if such committee is made up of three or more individuals, then one member of the committee need not be an independent director. The director who is not independent may not be a current officer or employee or immediate family member of an officer or employee. Such individual may be appointed to the Compensation Committee if the board, under exceptional and limited circumstances, determines that such individual's membership on the committee is required by the best interests of the company and its shareholders, and the board discloses, in the proxy statement for the next annual meeting subsequent to such determination (or, if the issuer does not file a proxy, in its Form 10-K or 20-F), the nature of the relationship and the reasons for the determination. The member appointed under this exception may not serve for longer than two years.

(ii) Compensation Committee Independence. In addition to the director independence requirements of Rule 5.3(k)(1), the board must affirmatively determine that all of the members of the Compensation Committee are independent under this Rule 5.3(k)(4)(ii). In affirmatively determining the independence of any director who will serve on the Compensation Committee, the Board must consider all factors specifically relevant to determining whether a director has a relationship to the listed company which is material to that director's ability to be independent from management in connection with the

duties of a Compensation Committee member, including, but not limited to: (A) the source of compensation of such director, including any consulting, advisory or other compensatory fee paid by the listed company to such director; and (B) whether such director is affiliated with the listed company, a subsidiary of the listed company or an affiliate of a subsidiary of the listed company.

In affirmatively determining the independence of any director who will serve on the compensation committee of the listed company's board of directors, the board of directors must consider all factors specifically relevant to determining whether a director has a relationship to the listed company which is material to that director's ability to be independent from management, in connection with the duties of a compensation committee member including, but not limited to, the two factors that are set forth in the immediately preceding paragraph. When considering the sources of a director's compensation in determining his independence for purposes of compensation committee service, the board should consider whether the director receives compensation from any person or entity that would impair his ability to make independent judgments about the listed company's executive compensation. Similarly, when considering any affiliate relationship a director has with the company, a subsidiary of the company, or an affiliate of a subsidiary of the company, in determining his independence for purposes of compensation committee service, the board should consider whether the affiliate relationship places the director under the direct or indirect control of the listed company or its senior management, or creates a direct relationship between the director and members of senior management, in each case of a nature that would impair his ability to make independent judgments about the listed company's executive compensation.

If a listed company fails to comply with the Compensation Committee composition requirements of Rule 5.3(k)(4)(i) and (ii) for reasons outside the member's reasonable control, that person, with prompt notice to the Corporation and only so long as a majority of the members of the Compensation Committee continue to be independent, may remain a member of the Compensation Committee until the earlier of the next annual shareholders' meeting of the listed company or one year from the occurrence of the event that caused the member to be no longer independent.

(iii) Compensation Committee Charter. The committee must have a written charter that addresses:

- (A) The committee's purpose which, at a minimum, must be to discharge the board's responsibilities relating to compensation of the company's executives, and to produce an annual report on executive officer compensation for inclusion in the listed company's proxy statement (or, if the issuer does not file a proxy, in its Form 10-K or 20-F), in accordance with applicable rules and regulations.
- (B) The committee's duties and responsibilities, which at a minimum, must be to:

- (i) Review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and, either as a committee or together with the other independent directors (as directed by the board), determine and approve the CEO's compensation level based on this evaluation.
 - (ii) Make recommendations to the board with respect to non-CEO executive officer compensation, and incentive-compensation and equity-based plans that are subject to board approval.
- (C) An annual performance evaluation of the compensation committee.
- (D) Committee member qualifications, committee member appointment and removal, committee structure and operations (including authority to delegate to subcommittees), and committee reporting to the board.
- [(E) The committee's authority to retain and terminate a consultant to assist in the evaluation of a director, CEO or senior executive compensation. The committee shall have the sole authority to approve the consultant's fees and other retention terms.]

(iv) Compensation Consultants.

(I) The Compensation Committee may, in its sole discretion, retain or obtain the advice of a compensation consultant, independent legal counsel or other adviser.

(II) The Compensation Committee shall be directly responsible for the appointment, compensation and oversight of the work of any compensation consultant, independent legal counsel or other adviser retained by the Compensation Committee.

(III) The listed company must provide for appropriate funding, as determined by the Compensation Committee, for payment of reasonable compensation to a compensation consultant, independent legal counsel or any other adviser retained by the Compensation Committee.

(v) Compensation Consultant Independence.

The Compensation Committee may select a compensation consultant, legal counsel or other adviser to the Compensation Committee only after taking into consideration all factors relevant to that person's independence from management, including the following:

- (I) The provision of other services to the listed company by the person that employs the compensation consultant, legal counsel or other adviser;

(II) The amount of fees received from the listed company by the person that employs the compensation consultant, legal counsel or other adviser, as a percentage of the total revenue of the person that employs the compensation consultant, legal counsel or other adviser;

(III) The policies and procedures of the person that employs the compensation consultant, legal counsel or other adviser that are designed to prevent conflicts of interest;

(IV) Any business or personal relationship of the compensation consultant, legal counsel or other adviser with a member of the compensation committee;

(V) Any stock of the listed company owned by the compensation consultant, legal counsel or other adviser; and

(VI) Any business or personal relationship of the compensation consultant, legal counsel, other adviser or the person employing the adviser with an executive officer of the listed company.

••• Commentary -----

.01 Controlled companies, limited partnerships and any company in bankruptcy need not comply with the requirements of [this provision] Rule 5.3(k)(4).

.02 Issuers that satisfy the definition of smaller reporting company in Exchange Act Rule 12b-2 must comply with Rule 5.3(k)(4), except that they need not comply with Rules 5.3(k)(4)(ii) and (v).

Under Exchange Act Rule 12b-2, a company tests its status as a smaller reporting company on an annual basis at the end of its most recently completed second fiscal quarter (hereinafter, for purposes of this Commentary .02, the "Smaller Reporting Company Determination Date"). A smaller reporting company with a public float of \$75 million or more as of the last business day of its second fiscal quarter will cease to be a smaller reporting company as of the beginning of the fiscal year following the Smaller Reporting Company Determination Date. The compensation committee of a company that has ceased to be a smaller reporting company shall be required to comply with Rule 5.3(k)(4)(v) as of six months from the date it ceases to be a smaller reporting company and must have:

- one member of its compensation committee that meets the independence standard of Rule 5.3(k)(4)(ii) within six months of that date;
- a majority of directors on its compensation committee meeting those requirements within nine months of that date; and
- a compensation committee comprised solely of members that meet those requirements within twelve months of that date.

.03 Listed foreign private issuers are subject to Rule 5.3 (k)(4), except that a listed foreign private issuer may avail itself of an exemption from the application of Rule 5.3(k)(4) if it discloses in its annual report it is required to file with the SEC that includes audited financial statements (including on Forms 10-K, 20-F, or 40-F) the reason why it does not have an independent Compensation Committee.

.04 Nothing in Rule 5.3(k)(4)(v) shall be construed: (A) to require the Compensation Committee to implement or act consistently with the advice or recommendations of the compensation consultant, independent legal counsel or other adviser to the Compensation Committee; or (B) to affect the ability or obligation of the Compensation Committee to exercise its own judgment in fulfillment of the duties of the Compensation Committee.

.05 The Compensation Committee is required to conduct the independence assessment outlined in Rule 5.3(k)(4)(v) with respect to any compensation consultant, legal counsel or other adviser that provides advice to the Compensation Committee, other than: (i) in-house legal counsel; and (ii) any compensation consultant, legal counsel or other adviser whose role is limited to the following activities for which no disclosure would be required under Item 407(e)(3)(iii) of Regulation S-K: consulting on any broad-based plan that does not discriminate in scope, terms, or operation, in favor of executive officers or directors of the listed company, and that is available generally to all salaried employees; or providing information that either is not customized for a particular company or that is customized based on parameters that are not developed by the compensation consultant, and about which the compensation consultant does not provide advice.

.06 Nothing in Rule 5.3(k)(4)(v) requires a compensation consultant, legal counsel or other compensation adviser to be independent, only that the Compensation Committee consider the enumerated independence factors before selecting or receiving advice from a compensation adviser. The Compensation Committee may select or receive advice from any compensation adviser they prefer including ones that are not independent, after considering the six independence factors outlined in Rule 5.3(k)(4)(v)(I)—(VI).

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Rule 5.3(n). Listed Foreign Private Issuers

The following will be the operative text of NYSE Arca Equities Rules 5.3(n) effective commencing July 1, 2013:

Listed foreign private issuers must disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under the Corporation's listing standards. Listed foreign private issuers need not comply with Rule 5.3(k)(4), subject to the disclosure requirement set forth in Commentary .03 to that rule. The disclosure requirement in Commentary .03 to Rule 5.3(k)(4) is separate from the

disclosure requirements in this Rule 5.3(n) and, where applicable, companies must comply with the specific requirements of both provisions. Listed foreign private issuers must comply with the provisions of Rule 5.3(k)(5). Listed foreign private issuers may provide this disclosure either on their web site (provided it is in the English language and accessible from the United States) and/or in their annual report as distributed to shareholders in the United States (again, in the English language). If the disclosure is only made available on the web site, the annual report shall so state and provide the web address at which the information may be obtained.

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