

Text of the Proposed Rule Changes

The proposed changes to Sections 110, 801, 803, and 805 will become operative on July 1, 2013. Consequently, the existing text of these sections will remain in the Company Guide 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 Company Guide, 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.

Added text underlined; deleted text in [brackets].

Sec. 110. SECURITIES OF FOREIGN COMPANIES

The following is the operative text of Section 110 through June 30, 2013:

The Exchange recognizes that every corporate entity must operate in accordance with the laws and customary practices of its country of origin or incorporation. Therefore, in evaluating the eligibility for listing of a foreign based entity, the Exchange will consider the laws, customs and practices of the applicant's country of domicile, to the extent not contrary to the federal securities laws (including but not limited to Rule 10A-3 under the Securities Exchange Act of 1934), regarding such matters as: (i) the election and composition of the Board of Directors; (ii) the issuance of quarterly earnings statements; (iii) shareholder approval requirements; and (iv) quorum requirements for shareholder meetings. A company seeking relief under these provisions should provide written certification from independent local counsel that the non-complying practice is not prohibited by home country law. In addition, the company must provide English language disclosure of any significant ways in which its corporate governance practices differ from those followed by domestic companies pursuant to the Exchange's standards. This disclosure may be provided either on the company's web site and/or in its annual report as distributed to shareholders in the U.S. If the disclosure is only available on the web site, the annual report must so state and provide the web address at which the information may be obtained.

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Sec. 801. GENERAL

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(h) *The following is the operative text of Section 801(h) through June 30, 2013:*

Smaller Reporting Companies - Issuers that satisfy the definition of Smaller Reporting Company in [Regulation S-K, Item 10(f)(1)] Exchange Act Rule 12b-2 are subject to all requirements specified in Sections 802 and 803 below, except that such issuers are only required to maintain a board of directors comprised of at least 50% independent directors, and an audit committee of at least two members, comprised solely of independent directors who also meet the requirements of Rule 10A-3 under the Securities Exchange Act of 1934.

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Sec. 803. INDEPENDENT DIRECTORS AND AUDIT COMMITTEE

A. Independent Directors:

The following is the operative text of Section 803(A) through June 30, 2013:

- (1) Each issuer must have a sufficient number of independent directors on its board of directors (a) such that at least a majority of such directors are independent directors (subject to the exceptions set forth in Section 801) and (b) to satisfy the audit committee requirements set forth below.
- (2) "Independent director" means a person other than an executive officer or employee of the company. No director qualifies as independent unless the issuer's board of directors affirmatively determines that the director does not have a relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. In addition to the requirements contained in this Section 803A, directors serving on audit committees must also comply with the additional, more stringent requirements set forth in Section 803B(2) below. The following is a non-exclusive list of persons who shall not be considered independent:

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- (3) In the case of an investment company, in lieu of Sections 803A(2) (a) through (f), a director who is an "interested person" of the investment company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee.

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Sec. 805. EXECUTIVE COMPENSATION

The following is the operative text of Section 805 through June 30, 2013:

- (a) Compensation of the chief executive officer of a listed company must be determined, or recommended to the Board for determination, either by a Compensation Committee

comprised of independent directors or by a majority of the independent directors on its Board of Directors. The chief executive officer may not be present during voting or deliberations. Compensation for all other officers must be determined, or recommended to the Board for determination, either by such Compensation Committee or a majority of the independent directors on the company's Board of Directors.

(b) Notwithstanding paragraph (a) above, if the Compensation Committee is comprised of at least three members, one director who is not independent as defined in Section 803A, and is not a current officer or employee or an immediate family member of such person, may be appointed to the Compensation Committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the company and its shareholders, and the board discloses, in the next annual meeting proxy statement (or in its next annual report on SEC Form 10-K or equivalent if the issuer does not file an annual proxy statement) subsequent to such determination, the nature of the relationship and the reasons for that determination. A director appointed to the Compensation Committee pursuant to this exception may not serve for in excess of two years.

• • • *Commentary* -----

.01 Section 805 is not applicable to a controlled company (See Section 801(a)).

.02 The Compensation Committee or a majority of the independent directors is not precluded from approving awards (either with or without board ratification) or from seeking board ratification or approval as may be required to comply with applicable tax or state corporate laws.

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NYSE MKT Company Guide

Sec. 110. SECURITIES OF FOREIGN COMPANIES

The following will be the operative text of Section 110 with effect from July 1, 2013:

The Exchange recognizes that every corporate entity must operate in accordance with the laws and customary practices of its country of origin or incorporation. Therefore, in evaluating the eligibility for listing of a foreign based entity, the Exchange will consider the laws, customs and practices of the applicant's country of domicile, to the extent not contrary to the federal securities laws (including but not limited to Rule 10A-3 under the Securities Exchange Act of 1934), regarding such matters as: (i) the election and composition of the Board of Directors; (ii) the issuance of quarterly earnings statements; (iii) shareholder approval requirements; and (iv) quorum requirements for shareholder meetings. A company seeking relief under these provisions should provide written certification from independent local counsel that the non-complying practice is not prohibited by home country law. Any foreign based entity that is a foreign private issuer (as defined in Exchange Act Rule 3b-4(c)) can avail itself of an exemption from the

requirements of Section 805(c) hereof, but exemptive relief under Section 805(c) is not available to a foreign based issuer that is not a foreign private issuer. In addition, the company must provide English language disclosure of any significant ways in which its corporate governance practices differ from those followed by domestic companies pursuant to the Exchange's standards. This disclosure may be provided either on the company's web site and/or in its annual report [as distributed to shareholders in the U.S.] it is required to file with the SEC that includes audited financial statements (including on Forms 10-K, 20-F, or 40-F). If the disclosure is only available on the web site, the annual report must so state and provide the web address at which the information may be obtained.

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Sec. 801. GENERAL

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(h) The following will be the operative text of Section 801(h) with effect from July 1, 2013:

Smaller Reporting Companies - Issuers that satisfy the definition of Smaller Reporting Company in [Regulation S-K, Item 10(f)(1)] Exchange Act Rule 12b-2 are subject to all requirements specified in Sections 802 and 803 below, except that such issuers are only required to maintain a board of directors comprised of at least 50% independent directors, and an audit committee of at least two members, comprised solely of independent directors who also meet the requirements of Rule 10A-3 under the Securities Exchange Act of 1934. Smaller Reporting Companies are subject to Section 805, except that they are not subject to Sections 805(c)(1) and (c)(4).

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Sec. 803. INDEPENDENT DIRECTORS AND AUDIT COMMITTEE

A. Independent Directors:

The following will be the operative text of Section 803(A) with effect from July 1, 2013:

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- (2) "Independent director" means a person other than an executive officer or employee of the company. No director qualifies as independent unless the issuer's board of directors affirmatively determines that the director does not have a

relationship that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

In addition to the requirements contained in this Section 803A[.]; (i) directors serving on audit committees must also comply with the additional, more stringent requirements set forth in Section 803B(2) below; and (ii) directors serving on compensation committees and, in the case of a company that does not have a compensation committee, all independent directors, must also comply with the additional, more stringent requirements set forth in Section 805(c) below. The following is a non-exclusive list of persons who shall not be considered independent:

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- 3) In the case of an investment company, in lieu of Sections 803A(2) (a) through (f), a director who is an "interested person" of the investment company as defined in Section 2(a)(19) of the Investment Company Act of 1940, other than in his or her capacity as a member of the board of directors or any board committee.

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Sec. 805. EXECUTIVE COMPENSATION

The following will be the operative text of Section 805 with effect from July 1, 2013:

(a) Compensation of the chief executive officer of a listed company must be determined, or recommended to the Board for determination, either by a Compensation Committee comprised of independent directors or by a majority of the independent directors on its Board of Directors (as used in this Section 805, the term "Compensation Committee" shall, in relation to any listed company that does not have a Compensation Committee, refer to the listed company's independent directors as a group). The chief executive officer may not be present during voting or deliberations. Compensation for all other officers must be determined, or recommended to the Board for determination, either by such Compensation Committee or a majority of the independent directors on the company's Board of Directors.

(b) Notwithstanding paragraph (a) above, if the Compensation Committee of a Smaller Reporting Company is comprised of at least three members, one director who is not independent as defined in Section 803A, and is not a current officer or employee or an immediate family member of such person, may be appointed to the Compensation Committee, if the board, under exceptional and limited circumstances, determines that membership on the committee by the individual is required by the best interests of the company and its shareholders, and the board discloses, in the next annual meeting proxy statement (or in its next annual report on SEC Form 10-K or equivalent if the issuer does not file an annual proxy statement) subsequent to such determination, the nature of the relationship and the reasons for that determination. A director appointed to the

Compensation Committee pursuant to this exception may not serve for in excess of two years.

(c) (1) Independence Requirements

In addition to the director independence requirements of Section 803A, the board must affirmatively determine that all of the members of the Compensation Committee or, in the case of a company that does not have a Compensation Committee, all of the independent directors, are independent under this Section 805(c)(1). 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.

(2) Cure Period

If a listed company fails to comply with the Compensation Committee composition requirements of either paragraph (a) above or (if applicable) this Section 805(c) because a member of the Compensation Committee ceases to be independent in accordance with Section 803A or (if applicable) this Section 805(c) for reasons outside the member's reasonable control, that person, with prompt notice to the Exchange and only so long as a majority of the members of the Compensation Committee continue to be independent in accordance with the applicable Exchange independence standards, 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.

(3) 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.

(4) 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 relevant factors, 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.

(5) Transition Period

Listed companies will have until the earlier of their first annual meeting after January 15, 2014, or October 31, 2014, to comply with the independence standard of Section 805(c)(1).

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 subsection, the "Smaller Reporting Company Determination Date"). A smaller reporting company with a public float of \$75 million or more as 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 Section 805(c)(4) as of six months from the date it ceases to be a smaller reporting company and must have:

- (i) one member of its compensation committee that meets the independence standard of Section 805(c)(1) within six months of that date;
- (ii) a majority of directors on its compensation committee meeting those requirements within nine months of that date; and
- (iii) a compensation committee comprised solely of members that meet those requirements within twelve months of that date.

Any such company that does not have a compensation committee must comply with this transition requirement with respect to all of its independent directors as a group.

••• *Commentary* -----

.01 Section 805 is not applicable to a controlled company (See Section 801(a)). Sections 805(c)(1) and (c)(4) are not applicable to a smaller reporting company.

.02 The Compensation Committee [or a majority of the independent directors] is not precluded from approving awards (either with or without board ratification) or from seeking board ratification or approval as may be required to comply with applicable tax or state corporate laws.

.03 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 proposed commentary provides that 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.

.04 Nothing in Section 805(c) 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 Section 805(c)(4) 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 Section 805 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 Section 805(c)(4)(i)—(vi).

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