

# Corporate Governance Certification Form

(To be completed by a company seeking to list on The NASDAQ Stock Market)

Company Name: \_\_\_\_\_

Symbol: \_\_\_\_\_

**Re: Compliance with NASDAQ's requirements relating to Audit Committees, the Director Nominations Process, the Compensation of Officers, Board Composition, Executive Sessions and Code of Conduct**

## **1. Audit Committee Composition – Rule 4350(d)(2)(A)**

I hereby certify that the Company has, and will continue to have, an Audit Committee of at least three members, comprised solely of directors each of whom: (1) meets NASDAQ's definition of independence contained in Rule 4200(a)(15) (subject to the exception provided in Rule 4350(d)(2)(B) and the cure period provided in Rule 4350(d)(4)); (2) meets the requirements of SEC Rule 10A-3(b)(1) (subject to exceptions provided in Rule 10A-3(c) and the cure period provided in Rule 4350(d)(4)); (3) has not 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; and (4) is able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement, as required by Rule 4350(d)(2).

In addition, I hereby certify that the Company has, and will continue to have, at least one member of the Audit Committee who has past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

- For Initial Public Offerings Only: Check here if the Company is utilizing the phase-in provisions pursuant to Rule 4350(a)(5) for the Audit Committee requirement. If this box is checked, the certifications above will be effective as of the end of the phase-in period.
- For Foreign Private Issuers<sup>1</sup> Only: Check here if the Company is following home country practices in lieu of this requirement and has provided NASDAQ with a written statement from an independent counsel in the Company's home country certifying that the Company's practices are not prohibited by the home country laws. A company checking this box must still have an audit committee that satisfies Rule 4350(d)(3) and ensure that such audit committee members meet the independence requirement in Rule 4350(d)(2)(A)(ii). The Company must disclose in its annual reports filed with the SEC that it does not comply with this requirement (as well as each other requirement of Rule 4350 that it does not follow) and describe the home country practice followed by the Company in lieu of such requirement.

<sup>1</sup> As defined in SEC Rule 3b-4(c)

## **2. Audit Committee Charter – Rule 4350(d)(1)**

I hereby certify that the Company has adopted a formal written Audit Committee charter specifying the items enumerated in Rule 4350(d)(1), and that the Audit Committee will review and assess the adequacy of the charter on an annual basis. Please provide a copy of the charter and note the date of its adoption.

- For Foreign Private Issuers Only: Check here if the Company is following home country practices in lieu of this requirement and has provided NASDAQ with a written statement from an independent counsel in the Company's home country certifying that the Company's practices are not prohibited by the home country laws. The Company must disclose in its annual reports filed with the SEC that it does not comply with this requirement (as well as each other requirement of Rule 4350 that it does not follow) and describe the home country practice followed by the Company in lieu of such requirement.

## **3. Nominations of Directors – Rule 4350(c)(4)(A)**

I hereby certify that the Company complies with Rule 4350(c)(4)(A), which requires independent director involvement in the selection of director nominees.

- The Company complies with this requirement by having a Nominations Committee comprised solely of independent directors.
- The Company complies with this requirement by having director nominees selected or recommended by a majority of its independent directors.
- For Initial Public Offerings, Spin-Offs, and Companies Emerging From Bankruptcy: Check here if the Company is utilizing the phase-in provisions pursuant to Rule 4350(a)(5) for the Director Nominations Process requirement. If this box is checked, the certifications above will be effective as of the end of the phase-in period.
- For "Controlled Companies" Only: Check here if the Company is utilizing the "Controlled Company" exemption pursuant to Rule 4350(c)(5) for purposes of the Director Nominations Process requirement. A company relying upon this exemption must disclose in its annual meeting proxy statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F) that it is a Controlled Company and the basis for that determination. In the event the Company ceases to be a Controlled Company, a new certification will be required.
- For Foreign Private Issuers Only: Check here if the Company is following home country practices in lieu of this requirement and has provided NASDAQ with a written statement from an independent counsel in the Company's home country certifying that the Company's practices are not prohibited by the home country laws. The Company must disclose in its annual reports filed with the SEC that it does not comply with this requirement (as well as each other requirement of Rule 4350 that it does not follow) and describe the home country practice followed by the Company in lieu of such requirement.
- For Companies with Pre-Existing Agreements Only: Check here if the Company is subject to a binding obligation that was in effect prior to November 4, 2003 that requires a director nomination structure inconsistent with Rule 4350(c)(4). Pursuant to Rule 4350(c)(4)(E), such a company is not required to comply with the nomination requirements.

**4. Nominations Committee Charter or Board Resolution – Rule 4350(c)(4)(B)**

Rule 4350(c)(4)(B) requires companies to adopt a formal written charter or board resolution, as applicable, addressing the nominations process and such related matters as may be required under the federal securities laws. Please provide a copy of the charter or board resolution and note the date of adoption.

- For Controlled Companies Only: Check here if the Company is utilizing the "Controlled Company" exemption pursuant to Rule 4350(c)(5) for purposes of the Nominations Committee Charter requirement. A company relying upon this exemption must disclose in its annual meeting proxy statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F) that it is a Controlled Company and the basis for that determination. In the event the Company ceases to be a Controlled Company, a new certification will be required.
  
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- For Companies with Pre-Existing Agreements Only: Check here if the Company is subject to a binding obligation that was in effect prior to November 4, 2003 that requires a director nomination structure inconsistent with Rule 4350(c)(4). Pursuant to Rule 4350(c)(4)(E), such a company is not required to comply with the nomination requirements.

**5. Compensation of Officers – Rule 4350(c)(3)**

I hereby certify that the Company complies with Rule 4350(c)(3), which requires independent director involvement in the determination of executive compensation.

- The Company complies with this requirement by having a Compensation Committee comprised solely of independent directors.
  
- The Company complies with this requirement by submitting such matters for approval or recommendation by a majority of the independent directors.
  
- For Initial Public Offerings, Spin-offs and Companies Emerging From Bankruptcy: Check here if the Company is utilizing the phase-in provisions pursuant to Rule 4350(a)(5) for the Compensation of Officers requirement. If this box is checked, the certifications above will be effective as of the end of the phase-in period.
  
- For Controlled Companies Only: Check here if the Company is utilizing the "Controlled Company" exemption pursuant to Rule 4350(c)(5) for purposes of the Compensation of Officers requirement. A company relying upon this exemption must disclose in its annual meeting proxy statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F) that it is a Controlled Company and the basis for that determination. In the event the Company ceases to be a Controlled Company, a new certification will be required.

- For Foreign Private Issuers Only: Check here if the Company is following home country practices in lieu of this requirement and has provided NASDAQ with a written statement from an independent counsel in the Company's home country certifying that the Company's practices are not prohibited by the home country laws. The Company must disclose in its annual reports filed with the SEC that it does not comply with this requirement (as well as each other requirement of Rule 4350 that it does not follow) and describe the home country practice followed by the Company in lieu of such requirement.

**6. Majority Independent Directors – Rule 4350(c)(2)**

I hereby certify that the Company's board of directors is comprised of a majority of independent directors as required by Rule 4350(c)(2).

- For Initial Public Offerings, Spin-Offs, and Companies Emerging From Bankruptcy: Check here if the Company is utilizing the phase-in provisions pursuant to Rule 4350(a)(5) for the Majority Independent Directors requirement. If this box is checked, the certifications above will be effective as of the end of the phase-in period.
- For Controlled Companies Only: Check here if the Company is utilizing the "Controlled Company" exemption pursuant to Rule 4350(c)(5) for purposes of the Majority Independent Directors requirement. A company relying upon this exemption must disclose in its annual meeting proxy statement (or, if the Company does not file a proxy, in its Form 10-K or 20-F) that it is a Controlled Company and the basis for that determination. In the event the Company ceases to be a Controlled Company, a new certification will be required.
- For Foreign Private Issuers Only: Check here if the Company is following home country practices in lieu of this requirement and has provided NASDAQ with a written statement from an independent counsel in the Company's home country certifying that the Company's practices are not prohibited by the home country laws. The Company must disclose in its annual reports filed with the SEC that it does not comply with this requirement (as well as each other requirement of Rule 4350 that it does not follow) and describe the home country practice followed by the Company in lieu of such requirement.

**7. Executive Sessions - Rule 4350(c)(2)**

I hereby certify that the Company will have regularly scheduled meetings at which only independent directors are present ("executive sessions"), as required by Rule 4350(c)(2).

- For Foreign Private Issuers Only: Check here if the Company is following home country practices in lieu of this requirement and has provided NASDAQ with a written statement from an independent counsel in the Company's home country certifying that the Company's practices are not prohibited by the home country laws. The Company must disclose in its annual reports filed with the SEC that it does not comply with this requirement (as well as each other requirement of Rule 4350 that it does not follow) and describe the home country practice followed by the Company in lieu of such requirement.

**8. Code of Conduct – Rule 4350(n)**

I hereby certify that the Company has adopted one or more codes of conduct applicable to all directors, officers and employees, and that such codes are publicly available, as required by Rule 4350(n).

For Foreign Private Issuers Only: Check here if the Company is following home country practices in lieu of this requirement and has provided NASDAQ with a written statement from an independent counsel in the Company's home country certifying that the Company's practices are not prohibited by the home country laws. The Company must disclose in its annual reports filed with the SEC that it does not comply with this requirement (as well as each other requirement of Rule 4350 that it does not follow) and describe the home country practice followed by the Company in lieu of such requirement.

A duly authorized officer of the Company must sign this certification.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Date: \_\_\_\_\_

**Submit this Certification Form to:**

The NASDAQ Stock Market LLC  
Listing Qualifications  
9600 Blackwell Road  
Rockville, MD 20850  
Telephone: 301.978.8008

