SOX 406 Complaint and associated Conflict/Integrity Complaints under PCAOB, NASDAQ and NYSE Integrity Mandates

Attachments

- Patents (6370629 and its precursor "992")
- Co-Inventor's Agreement and Assignment Agreement
- Infringement Analysis documenting the aggregate of multi-billion dollar damages in Location Based Services sold through the infringers operations.

Electronic Service Of this Document

This document is served to the following parties through email with this notice of service and proof of service declaration.

This document was served electronically to the following parties on 7/5/2010 and pertains to an ongoing litigation between Glassey and McNeil v Bosso, Book, Symmetricom, Hastings, Cannon and DOES.

GOOGLE Corporation
Served through email to Tim Porter, Legal Counsel
timporter@google.com for delivery to GOOGLE AUDIT COMMITTEE
(including Ann Mather, Chair, L. John Doerr, and K. Ram Shriram).

APPLE
Served through email to Edward Scott Esq edscott@apple.com for delivery to the Apple Audit Committee and General Counsel's office including but not limited to Audit Committee Members Mr. Campbell, Mr. York and Dr. Levinson.

AT&T
Tom Restiano Esq. Legal Counsel tr6376@att.com - for delivery to the AT&T Audit Committee including Jon C. Madonna, Chairman, Lynn M. Martin, William F. Aldinger III, Jaime Chico Pardo, James P. Kelly

Thomas A. Restaino, Chief Technology Counsel
AT&T Services, Inc.
Room 3A248
One AT&T Way
Bedminster, New Jersey 07921

v: 908.532.1880
f: 908.532.1219

NOKIA
Marja Liisa Autti, served by email at marjaliisa.autti@nokia.com

Marja Liisa Autti
Nokia Corporation

Street address: Itämerenkatu 11-13, FIN-00180 Helsinki, FINLAND
Postal address: PO Box 407, FIN-00045 Nokia Group, FINLAND
Email: marjaliisa.autti@nokia.com

Research In Motion

Abdul Zindani Esq of RIM, for review and delivery to the RIM Audit Committee members

Abdul R. Zindani

Senior Manager, Patent Portfolio Development,
Research In Motion Corp.,
Bldg. 6, Brazos East, Suite 100,
5000 Riverside Drive,
Irving, TX 75039
Phone: (972) 373-1750
Fax: (972) 506-3128

Notice of SOX 406 and other Ethical Violations

Be advised that you are formally served notice that your company is a 3rd Party beneficiary of a Fraud against the US Patent Office and Glassey & McNeil in its infringement of technologies which Glassey and McNeil hold the principal rights to which are controlled under US Patent 6,370,629 (the Patent).

Your company as an Infringer against IP rights Glassey and McNeil own

Your company has already been notified of its infringement and served with formal analysis documents showing the specific classes of use which your mobile device's offer in the form of Location Based Services, all of which Glassey and McNeil assert infringe on their IP rights therein.

Notice of 3rd Party Beneficiary of a Federal Fraud creates new responsibilities for you

You have been served with Cease and Desist notices already and have responded that "based on Symmetricoms response and the Assignment Document's on file with the US Patent Office that Glassey and McNeil do not own those rights and have no standing therein". We refute that and through this formally reassert notice" to Cease and Desist use or Infringement" as specified in the Location Based Services your mobile communications and navigator systems produce. The service of notice of this fraud creates a duty to disclose and perform proper diligence.

The disclosure requirements pertain to your investigating this matter and determining whether the fraud took place and not just relying on 'Asking Symmetricom whether Hastings or others committed fraud in the assignment of the patent or interfered with Glassey's and McNeil's rights' per the claims of the lawsuit. Further you have a duty to disclose the findings of your investigation to your board to properly allow them to determine whether Glassey and McNeil's claims of Intellectual Property Infringement as specified in their cease and desist demand to you are real.

The argument here is that most parties simply 'asked Symmetricom whether Glassey and McNeil have any rights", but since it is Glassey and McNeil's claim that Patent Assignment Fraud took place, whether intentional or not, just asking Symmetricom whether their previous employee and officer of the company "committed a fraud or not" does not absolve your company of its responsibilities as an ethical and transparent public

entity you must review the Co-Inventor Agreement for its applicability as 'the other half of the Assignment Agreement" and as such provides for Glassey and McNeil's claims in the ownership of the underlying GeoSpatial Controls of which Glassey is the sole inventor of.

This second notice creates a responsibility to investigate the evidence in this matter.

As such, because you are a public company, this second notice triggers specific SOX 406 and other reporting requirements inside your organization to determine whether your actions would constitute "being a 3rd party beneficiary to a federal fraud" that being the asserted fraudulent misfiling of the Patent's blanket release without the controlling Co-Inventor's Agreement, an act which Glassey and McNeil assert in their litigation on file with the State of California as McNeil and Glassey v Bosso, Book, Symmetricom, Hastings, Cannon and DOES – #CV-165643, that Hastings in his initial filing created the misrepresentation that this IP is himself and now his successors Digital Delivery Inc, Datum Inc. and finally Symmetricom , when per the Co-Inventor's agreement which the release is the second document in, specifically limited the use and provided for Glossy's and McNeil's IP protections therein.

Again, the summary of the initial fraud we are asserting occurred is simply that when Hastings filed his supposedly Amended "US Patent Application" that he misrepresented the release to the Patent Office and that through this he ultimately was granted US 6370629 alone because he failed to attach the other part of the release agreement, the

terms and conditions of the release itself. The question to be answered is whether Symmetricom is asserting that the Co-Inventor's Agreement which Glassey and McNeil assert is the first half of the Assignment Agreement is that or whether Symmetricom is asserting that the assignment itself terminated the Co-Inventor Agreement.

We further assert that Hastings added unlicensed claims to that patent, those being claims number 24 through 32 and further 'stretched' the definitions of the first 23 claims which were authorized only as to how they apply to the previous patent (see patent #992 attached herein), so that they form a completely free standing patent not an amendment of the original patent the Co-Inventor's agreement talks to.

The allegation is that your company is now infringing in areas which are rightfully and still legally Glassey and McNeil's property and as such you have an ethical requirement to cease and desist or make arrangements with Glassey and McNeil for proper licensing.

Your Sua Sponte Responsibility to investigate the claim

Based in this notice, you now formally have a Sua Sponte responsibility to review the evidence attached to this document as to whether it indicates that HASTINGS and SYMMETRICOM committed a fraud against Glassey in his formal filing of incomplete release documents with the US Patent and Trademark Office, an act which Glassey and McNeil assert caused 'the misrepresentation of the blanket assignment of the Intellectual Property underneath US Patent 6,370,629 ' rather than the limited use license that the release-terms document specifies. Since you are directly aware at the Audit Committee

Level of this asserted fraud there is a direct responsibility to formally investigate this or face liability therein.

Since you have been notified of this already, We ask you to review both documents and make up your own mind as to whether the release is based on some other set of undocumented terms and as such void for lack of consideration under US Patent Law or whether it is in fact tied to the Co-Inventor's Agreement which discusses the release and what that release pertains to.

Your options

Because of this notice, your company, a public entity and one controlled under SOX Regulatory and other Statutes as well as all "digital evidence" and "integrity in operation" frameworks, you must immediately on receipt of this notice acknowledge its receipt and then within the allotted 4 calendar days

1) Ignore this in which case your company will be named in this as one of the Unnamed DOES the matter was filed against,

or

2) Send written formal notice through service that your company will not comply with any efforts to make a factual determination of whether Glassey and McNeil's claims are true or not (in which case your company and its resources will also simply be named as one of the Unnamed DOES in this matter so that it can properly be served and damages properly litigated against.

Or you could cooperate and spare us all of this pain and your shareholders the embarrassment and

3) Open an immediate "review project" in the Board's Audit Partner's control to determine whether Glassey and McNeil's claims regarding that "Hastings filing of the incomplete assignment to the Patent office are true" so that you can properly address this matter.

The claim Glassey and McNeil are making with regard to the patent is that the Patent Release is not one document but two and the terms of the release were separated from the cover sheet and then never filed.

Any plain text reading of the Co-Inventor Agreement clearly documents it is a part of the release document and not set aside by the release.

Filing of a wrongful release with the US Patent Office is in fact an act of criminal fraud

The willful withholding document from the US Patent and Trademark Office is in fact an act of fraud and since it was done electronically constitutes a larger and possibly criminal fraud as well and certainly qualifies this for a RICO type claim atop the Patent Fraud Claims which would them is leveraged through to the Infringers names as "Un-named DOES". The implication of being a co-conspirator after the fact opens your

organization to both significant civil and possibly Securities Fraud claims as well meaning a long and protracted legal fight over your hiding behind Hastings alleged frauds herein.

SOX 406

No one has ever pulled a successful defense against an Ethics Claim and this one is a doozy.

As the Audit Coordinator you personally are 'the Pope' for your organization, the ultimate holder of its integrity and as such you must issue your own Motu Proprio decree in this matter to start that investigation "as to whether it is reasonable that Glassey and McNeil's claim of 'that Hastings and his successors (*including Symmetricom) are less than factual based on Glassey and McNeil's evidence'".

Further that "hiding behind a claim that there is no formal court order here yet" then intentionally causes Glassey and McNeil more and ongoing Infringement Damages by your company's actions therein. It also opens a potential of a larger anti-trust claim for some of the infringers herein as well.

To enable this 406 Compliance Investigation, we are more than willing to provide all the evidence necessary including "crates of email and other documents" to substantiate this claim and because the filing of a false document with the Federal Government is both a civil and a criminal action under the Computer Fraud and Abuse Act you must take specific action to determine whether your company is now actively that third-party beneficiary of a criminal act by another entity whether that criminal act is ever prosecuted or not is also irrelevant. The ethical fact it is occurring is all that must be verified in order to compel you to act under SOX 406 requirements.

NYSE and NASDAQ Ethical Disclosures

A damage claim as raised in the attached analysis document sets a recovery for a damage similar to the Research In Motion damage claim asserted by NTP Inc in the email claims against Blackberry operations. This claim controls most forms of "Secure Location Based Services" which use location or temporal access windows as their controlling elements meaning most GPS navigator enabled applications directly infringe to one level or another and most all Location Based Services in use today directly infringe.

As such your entity is taking a multi-hundred million dollar walk down the Unethical Behavior Path and opening the executives and the officers of the company to litigation both civil and then through a Shareholder matter.

Certichron's Closing Response and scope of the damage claim

In any and all instances, our being put formally on notice that your organization is a third-party beneficiary of an ongoing fraud creates a new responsibility to either verify that and react to it or become a co-conspirator after the fact.

And since you are a publicly traded organization, under the SOX406 statute and other Ethics Statutes you are constrained to, the formal knowledge "of being a third-party beneficiary of a fraud" against another party would ethically impugn all of the offending entity's board officers who were notified of that through this communication.

In this case the infringed IP rights have significant value of well into the billions of dollars at a damage rate established in the NTP Inc v Research In Motion (Blackberry) email matter, wherein a damage of $1/handset was assessed and then enforced by the US Appellate Court. In this matter we assert the same $1/damage per each device infringing, meaning that for 2009 alone the damage claim would be approximately two billion ($2,000,000,000) for global infringement in the claims herein. As such this matter is of significant financial value and demands your immediate attention and investigation.

Please review this material and respond that you have received this posting since it is a direct threat of litigation in this matter.

Todd Glassey In Pro Se,

Appendices - Ethical Requirements of Public Corporations

The ethical requirements for public and listed entities are very clear for both those on the NASDAQ and those on NYSE or trading on foreign exchanges, and in all instances the issue of ethical avoidance of conflict of interests and acts of fraud by third parties is clearly a must. As an example of this we excerpt the NYSE operations ethical mandate and then the NASDAQ requirements for the same.

NYSE Ethics Requirements for entities listed

303A.10 Code of Business Conduct and Ethics

Listed companies must adopt and disclose a code of business conduct and ethics for directors, officers and employees, and promptly disclose any waivers of the code for directors or executive officers.

Commentary: No code of business conduct and ethics can replace the thoughtful behavior of an ethical director, officer or employee. However, such a code can focus the board and management on areas of ethical risk, provide guidance to personnel to help them recognize

and deal with ethical issues, provide mechanisms to report unethical conduct, and help to foster a culture of honesty and accountability.

Each code of business conduct and ethics must require that any waiver of the code for executive officers or directors may be made only by the board or a board committee and must be promptly disclosed to shareholders. This disclosure requirement should inhibit casual and perhaps questionable waivers, and should help assure that, when warranted, a waiver is accompanied by appropriate controls designed to protect the company. It will also give shareholders the opportunity to evaluate the board's performance in granting waivers.

Each code of business conduct and ethics must also contain compliance standards and procedures that will facilitate the effective operation of the code. These standards should ensure the prompt and consistent action against violations of the code. Each listed company's website must include its code of business conduct and ethics. The listed company must state in its annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10-K filed with the SEC that the foregoing information is available on its website and that the information is available in print to any shareholder who requests it.

Each company may determine its own policies, but all listed companies should address the most important topics, including the following:

- **Conflicts of interest.** A "conflict of interest" occurs when an individual's private interest interferes in any way – or even appears to interfere – with the interests of the corporation as a whole. A conflict situation can arise when an employee, officer or director takes actions or has interests that may make it difficult to perform his or her company work objectively and effectively. Conflicts of interest also arise when an employee, officer or director, or a member of his or her family, receives improper personal benefits as a result of his or her position in the company. Loans to, or guarantees of obligations of, such persons are of special concern. The listed company

should have a policy prohibiting such conflicts of interest, and providing a means for employees, officers and directors to communicate potential conflicts to the company.

- **Corporate opportunities.** Employees, officers and directors should be prohibited from (a) taking for themselves personally opportunities that are discovered through the use of corporate property, information or position; (b) using corporate property, information, or position for personal gain; and (c) competing with the company. Employees, officers and directors owe a duty to the company to advance its legitimate interests when the opportunity to do so arises.
- **Confidentiality.** Employees, officers and directors should maintain the confidentiality of information entrusted to them by the company or its customers, except when disclosure is authorized or legally mandated. Confidential information includes all non-public information that might be of use to competitors, or harmful to the company or its customers, if disclosed.
- **Fair dealing.** Each employee, officer and director should endeavor to deal fairly with the company's customers, suppliers, competitors and employees. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice. Listed companies may write their codes in a manner that does not alter existing legal rights and obligations of companies and their employees, such as "at will" employment arrangements.
- **Protection and proper use of company assets.** All employees, officers and directors should protect the company's assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on the company's profitability. All company assets should be used for legitimate business purposes.
- **Compliance with laws, rules and regulations (including insider trading laws).** The company should proactively promote compliance with laws, rules and regulations, including insider trading laws. Insider trading is both unethical and illegal, and should be dealt with decisively.

- **Encouraging the reporting of any illegal or unethical behavior.** The company should proactively promote ethical behavior. The company should encourage employees to talk to supervisors, managers or other appropriate personnel when in doubt about the best course of action in a particular situation. Additionally, employees should report violations of laws, rules, regulations or the code of business conduct to appropriate personnel. To encourage employees to report such violations, the company must ensure that employees know that the company will not allow retaliation for reports made in good faith.

NYSE Certification Requirements

303A.12 Certification Requirements

(a) Each listed company CEO must certify to the NYSE each year that he or she is not aware of any violation by the company of NYSE corporate governance listing standards, qualifying the certification to the extent necessary.

Commentary: The CEO's annual certification regarding the NYSE's corporate governance listing standards will focus the CEO and senior management on the listed company's compliance with the listing standards. Both this certification to the NYSE, including any qualifications to that certification, and any CEO/CFO certifications required to be filed with the SEC regarding the quality of the listed company's public disclosure, must be disclosed in the company's annual report to shareholders or, if the company does not prepare an annual report to shareholders, in the company's annual report on Form 10-K filed with the SEC.

(b) Each listed company CEO must promptly notify the NYSE in writing after any executive officer of the listed company becomes aware of any material non-compliance with any applicable provisions of this Section 303A.

(c) Each listed company must submit an executed Written Affirmation annually to the

NYSE. In addition, each listed company must submit an interim Written Affirmation each time a change occurs to the board or any of the committees subject to Section 303A. The annual and interim Written Affirmations must be in the form specified by the NYSE.

FINRA Regulated trading

FINRA has strengthened the market control rules after the 1000 point plunge and is actively enforcing Conflict Of Interest and Ethical Violation Claims by parties against Regulated Entities who trade shares on the Open Market through those exchanges.

This further strengthens the preceding rulings from both NASD and NYSE in light of Enron, Tyco, and any number of other frauds perpetrated by corporate executives against those internal and external to their company's.

As history we recount that on November 4, 2003, the Securities and Exchange Commission approved new corporate governance listing standards proposed by the Nasdaq Stock Market and the New York Stock Exchange (NYSE). The Nasdaq rules apply to companies listed on either the Nasdaq National Market or the Nasdaq SmallCap Market. The new standards became effective upon the earlier of a listed company's first annual meeting held after January 15, 2004 or October 31, 2004.

A summary of the new standards appears below, followed by a listing of the changes in proxy statement disclosures mandated by the new standards. Each of the Nasdaq and NYSE listing standards imposes new requirements with respect to:

- director independence;
- audit committees;
- compensation and nominating committees;
- non-management directors; and
- codes of business conduct and ethics.

NEW GOVERNANCE STANDARDS

The new Nasdaq and NYSE governance standards overlap with the audit committee requirements of Rule 10A-3, adopted by the SEC in April 2003 pursuant to the Sarbanes-Oxley Act. Rule 10A-3 sets forth certain audit committee requirements for entities with securities listed on a national securities exchange or national securities association. Notably, Rule 10A-3 includes an independence standard for audit committee members that is generally more stringent than the general director independence standard under the new, broader NASDAQ and NYSE governance standards. The Rule 10A-3 requirements become effective at the same time as the Nasdaq and NYSE rules.

It also further requires that the Audit committee take notice of any formal reporting irregularity or undisclosed operating risk with significant financial implications like an aggregate multibillion dollar infringement claim by the entity for instance.

Director Independence: Nasdaq

For any Nasdaq listed company, a majority of the board of directors must be independent. For a director to be considered independent under the new standards, the individual may not have any relationship which, in the opinion of the board, would "interfere with the exercise of independent judgment in carrying out the responsibilities of a director." Further, the following factors must be absent for the preceding three years:

(1) employment with the company, its parent or any subsidiary; nor can any family member[1] of the director be an executive officer of the company;

(2) receiving payments of more than $60,000[2] from the company, its parent or any subsidiary, or having any family member who received such payments;

(3) being (or having a family member that is) an executive officer of another entity if an executive officer of the listed company serves on the other entity's compensation committee;

(4) being (or having a family member that is) a partner of the company's independent auditor or a partner or employee of any firm that worked on the company's audit during the preceding three years; and

(5) being (or having a family member that is) a partner, controlling shareholder, or executive officer of another entity that pays to the company, or receives from the company, in any single year, the greater of $200,000 or five percent of the recipient entity's gross revenues[3].

In order for those directors to remain independent they must immediately invoke their right to demand a formal investigation into the IP infringement at a level which would have significant financial impact on their corporate entity and the refusal to do so would open them as a named party in any recovery litigation.

Director Independence: NYSE

A majority of the board of directors of NYSE listed companies must be independent, and no director will be considered independent unless the board affirmatively determines the director has no material relationship with the company. A director is not independent unless all of the following conditions have been absent for the preceding three years[4]:

(1) employment by the listed company, its parent or any subsidiary, or having an immediate family member[5] serve as an executive officer of the listed company;

(2) receiving (or an immediate family member receiving) more than $100,000 in direct compensation from the listed company, excluding director and committee fees, pension payments or deferred compensation payments (unless receipt is conditioned upon continued service);

(3) employment or other affiliation with the present or former external or internal auditor of the company, or having an immediate family member who is employed by or otherwise affiliated with the present or former external or internal auditor of the company;

(4) employment as an executive officer of another company (or having an immediate family member so employed) if any of the listed company's executives serve on the employer company's compensation committee; or

(5) employment by another company that pays or receives from the listed company, in any year, an amount exceeding the greater of $1 million or two percent of the other company's consolidated gross revenues, or having an immediate family member that makes or receives such payments.

Audit Committees: Nasdaq

The audit committee of a Nasdaq listed company must consist of at least three members, each of whom must be able to read and understand financial

statements, and none of whom can have participated in the preparation of the company's financial statements during the preceding three years. A minimum of one audit committee member must have past employment experience in accounting or finance, professional certification in accounting or other comparable experience or background that establishes the member's "financial sophistication." Any person who satisfies the SEC's definition of an "audit committee financial expert" is presumed to be financially sophisticated.

All members of the audit committee must be *independent* under the heightened independence standards of Rule 10A-3, as well as meeting the general Nasdaq independence requirements. Under Rule 10A-3, audit committee members may not receive, directly or indirectly, any compensation from the issuer (not even a *de minimus* amount), other than very limited exceptions for retirement payments, and may not be affiliates. *Note*: Nasdaq continues to have a *limited exception* that permits a listed company to have one audit committee member who does not meet Nasdaq's independence standard. *However*, that exception will only be available rarely, because the member will still be required to satisfy the strict audit committee independence standards under the SEC's Rule 10A-3.

A previous Nasdaq exception that allowed "small business issuers" to have two audit committee members has been eliminated under the new rules.

The audit committee must have a written charter setting forth its purpose, responsibilities and authority. The audit committee must be responsible for the appointment, compensation, retention and oversight of any public accounting firm

performing an audit or other attestation service, and the public accounting firm must report directly to the audit committee.

Audit committees must also establish procedures for the receipt, retention, and disposition of complaints concerning accounting, internal control, or auditing matters, including procedures for addressing confidential or anonymous submissions by employees regarding accounting or auditing issues. The audit committee must have the authority to engage independent counsel or other advisers as it deems necessary to carry out its duties and responsibilities. The audit committee must be provided with adequate funding and other resources to retain counsel and other advisers as may be necessary.

Audit Committees: NYSE

Audit committees must be comprised of at least three members, all of whom must be financially literate. At least one member must have experience in accounting or financial management. Any member who satisfies the SEC definition of "audit committee financial expert" is presumed to have the NYSE requisite experience in accounting or financial management.

All members of the audit committee must be *independent* under the heightened independence standards of Rule 10A-3. The audit committee members may not receive, directly or indirectly, any compensation from the issuer (not even a *de minimus* amount), other than very limited exceptions for retirement payments, and may not be affiliates.

Members of a listed company's audit committee cannot have excessive commitments to other audit committee work. If a member of a company's audit committee serves on the audit committees of two other public companies, the board of directors must make an affirmative determination that such member is able to devote sufficient attention to the listed company's committee.

The audit committee must have a written charter setting forth its purpose, duties and responsibilities. These duties and responsibilities must include, in addition to SEC-mandated items, a number of items specified in the new NYSE guidelines.

The audit committee must be responsible for the appointment, compensation, retention and oversight of any public accounting firm performing an audit or other attestation service, and the public accounting firm must report directly to the audit committee.

Audit committees must also establish procedures for the receipt, retention, and disposition of complaints concerning accounting, internal control, or auditing matters, including procedures for addressing confidential or anonymous submissions by employees regarding accounting or auditing issues. The audit committee must have the authority to engage independent counsel or other advisers as it deems necessary to carry out its duties and responsibilities. The audit committee must be provided with adequate funding and other resources to retain counsel and other advisers as may be necessary.

Compensation and Nominating Committees

Under the new governance rules for Nasdaq and the NYSE, listed companies must have independent compensation committees and nominating committees (or their equivalents). The rules permit the company to bypass the independent nomination process if a third party has a legal or contractual right to nominate a director.

Members of the compensation and nominating committees are subject to the general Nasdaq or NYSE independence standards (i.e., not the heightened standard used for audit committee independence). Nasdaq permits one non-independent director on each committee, for a period not to exceed two years, if the committee has at least three members and the board determines "under exceptional and limited circumstances" that the individual's membership is required by the best interests of the company and its shareholders

Other Provisions

Both the new Nasdaq and NYSE rules require "regularly scheduled" meetings of non-management directors. For Nasdaq listed companies, at least two meetings of the independent directors are required. For NYSE listed companies, if the non-management directors include directors who are not independent, the independent directors must meet separately at least once per year.

Both the Nasdaq and NYSE rules require companies to adopt codes of business conduct and ethics and make them publicly available. Under the new Nasdaq rules, the code must include enforcement provisions and must comply with the definition of a "code of ethics" as described in the new SEC disclosure rules under the Sarbanes-Oxley Act. Those rules require that the code include such topics as honest and ethical conduct, conflicts of interest, compliance with laws and regulations, and preparation of accurate, understandable and complete financial reports. The NYSE rules provide that the code of business conduct must address conflicts of interest, usurpation of corporate opportunity, confidentiality, fair dealing, compliance with legal requirements, and reporting of illegal or unethical behavior. Any waiver of the code granted for an executive officer or director must be reported on Form 8-K within five days.

Listed companies are required to promptly report to the listing authority any material noncompliance with the listing standards. The chief executive officer of an NYSE company must annually certify to the NYSE whether or not he or she is aware of any violation of the NYSE listing standards.

Nasdaq companies must review all related party transactions for potential conflicts of interest. All related party transactions must be approved by the audit committee or another committee of independent directors.

A Nasdaq company that receives a "going concern" qualification from its auditors must issue a public release disclosing the matter within seven days.

The NYSE rules require listed companies to develop and publish on their web sites corporate governance guidelines that must address at a minimum: (i) director qualifications; (ii) board self-evaluation; (iii) management succession; (vi) director compensation, qualification, responsibilities, continuing education and access to management.

PROXY STATEMENT DISCLOSURE REQUIREMENTS UNDER NEW RULES

The new governance rules for Nasdaq and NYSE-listed companies created a number of new disclosure requirements that will affect these companies' proxy statements, starting back in 2004 The new requirements include the following:

- Listed companies must disclose the names of directors determined to be independent under relevant standards. In addition, NYSE companies must affirmatively state that each independent director has no material relationship with the company, and the basis of the determination or set of standards used in making the determination.
- Nasdaq companies must disclose the appointment of non-independent directors to the audit, compensation and nominating committees under the "exceptional and limited circumstances" exception, and the reasons for the determination that the exception is available.
- NYSE companies must make disclosures about a director chosen to preside at executive sessions held without management, and a method for interested parties to communicate directly with the presiding director or all non-management directors.

There was a split between Nasdaq and the NYSE on the effective date of these disclosure rules which FINRA merged into one set recently.

---

[1]A "family member" is a person's spouse, parent, parent in-law, child, sibling, sibling in-law, or anyone residing in the person's home.
[2]Excluding director and committee fees, payments from investments in the company's securities, compensation to a family member who is not an executive officer of the company, pension or other deferred compensation payments not contingent upon continued service.
[3]Excluding payments from investments in the company's securities.
[4]Until November 4, 2004, the "look-back" period is only one year.
[5]A person's "immediate family member" is the person's spouse, parent, child, sibling (whether by blood or marriage), and anyone who shares the person's residence (excluding domestic employees).