2006 EDITION

ANNUAL MEETING HANDBOOK

Providing a General Overview of the State and Federal Laws and Stock Exchange Rules Related to Annual Meetings of Shareholders

Latham & Watkins LLP
Craig M. Garner • Louis G. Alonso

RR DONNELLEY

2006 Annual Meeting Handbook

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2006 ANNUAL MEETING HANDBOOK

TABLE OF CONTENTS

	Page
INTRODUCTION	1
DEVELOPMENTS IN THE LAW FOR THE 2006 PROXY SEASON	2
Shareholder Proposals and Rule 14a-8	2
THE LEGAL REQUIREMENT THAT AN ANNUAL MEETING BE HELD	5
I. State Corporate Laws	5
II. Federal Securities Laws	6
III. Stock Exchange Rules	6
IV. Corporate Charter and Bylaws	7
FEDERAL PROXY RULES AND THE PROXY STATEMENT	8
I. Application of the Proxy Rules	8
A. Background	8
B. Solicitation	9
II. The Proxy Statement	11
A. Notice of the Meeting	11
B. Voting Information	13
C. Information About Directors, Director Nominees and Executive Officers	13
D. Board of Directors and Committee Information	14
E. Executive Compensation Disclosure	15
F. Compensation Committee Report	17
G. Director Compensation Disclosure	18
H. Beneficial Ownership Information	18
I. Section 16 Reports	19
J. Audit Committee Disclosure	20

	Page
K. Nominating Committee Disclosure	24
L. Shareholder Communications with the Board of Directors	26
M. Disclosure Related to Independent Auditors	27
N. Performance Graph	29
O. Certain Relationships and Related Transactions	29
P. Equity Compensation Plan Shareholder Approval Rules	31
Q. Shareholder Nominations for Director at Annual Meeting	35
R. Presentation of Information	39
S. Other Requirements Related to Proxy Solicitation Materials	39
T. Plain English	39
III. Form of Proxy	40
IV. Due Diligence Regarding Proxy Materials	41
V. Distribution of Proxy Materials to Shareholders	42
A. Electronic Delivery	42
B. Householding	43
VI. Filing Proxy Materials	43
A. Securities and Exchange Commission	43
B. Stock Exchanges	46
THE ANNUAL REPORT TO SHAREHOLDERS	47
I. Preparation	47
II. Integration of Annual Report to Shareholders and Other Securities Law Forms	48
III. Filing Requirements	48
A. Securities and Exchange Commission	48
B. Stock Exchanges	48
IV. Delivery to Shareholders	49
SHAREHOLDER PROPOSALS	50
I. Procedural Requirements	50
II. Substantive Grounds for Exclusion of a Shareholder Proposal	51

Page

III. Responses to Shareholder Proposals 52

PREPARING FOR THE ANNUAL MEETING 53

I. Time and Responsibility Schedule and Checklist 53

II. Setting the Annual Meeting Date 54

III. Setting the Record Date 55

IV. Determining the Order of Business; Preparing the Agenda and Rules of Conduct 55

V. Pre-Meeting Logistics 56

A. Location 56

B. Physical Arrangements 57

C. Attendance Rules 57

D. Security 58

VI. Preparing for Unexpected Events; Informational Packages and Detailed Meeting Script 58

VII. Corporate Gadflies 59

VIII. Shareholder Lists 60

THE MEETING 61

I. Transaction of Business at the Annual Meeting 61

A. Voting Procedures—Quorum 61

B. Voting Procedures—Vote Required 61

C. Voting Procedures—Electronic Voting 62

II. Unexpected Proposals 62

III. Shareholder Questions 63

IV. Information Provided to Shareholders at the Annual Meeting 63

V. Adjournment 64

VI. Electronic Annual Meetings and Supplemental Broadcasts 64

A. Simulcasting the Annual Meeting to Numerous Locations 64

B. Electronic Meetings 64

VII. Regional Meetings 66

Page

POST-MEETING ACTIVITIES 67

I. Minutes of the Meeting and Corporate Documents 67

II. Organizational Board Meeting Following Shareholders Meeting 67

III. Report on the Results of Voting 68

IV. Post-Meeting Review 68

CONCLUSION 69

RESOURCES 70

Appendix A: General Notice and Filing Requirements for Annual Meetings and Related Matters A-1

Appendix B: Sample Compensation Committee Report B-1

Appendix C: Sample Audit Committee Report C-1

Appendix D: Sample Agenda and Rules of Conduct D-1

Appendix E: Sample Annual Meeting Script E-1

Appendix F: Selected Bibliography F-1

INTRODUCTION

Every public corporation in the United States is required by its charter documents, the corporate law of its state of incorporation and the federal securities laws to hold a meeting of shareholders at least once each year. Holding an annual meeting of shareholders, however, is much more than merely fulfilling a legal requirement. The annual meeting allows shareholders to express a judgment on management's stewardship of their company, allows management to obtain shareholder approval of important matters and provides a forum for management and shareholders to discuss the progress and direction of the corporation's business. The annual meeting generally provides a controlled and friendly environment in which to hold these discussions. In some cases, though, it devolves into little more than discontented parties complaining about the corporation's stock price, financial performance or business operations. Nonetheless, based on its intended benefits to shareholders and management, the annual meeting has become a principal symbol of corporate democracy.

This handbook is intended to assist corporations in preparing for the annual meeting. It provides a general outline of the key legal requirements contained in the federal securities laws and state corporate laws, as well as the requirements of the stock exchanges and other trading markets. In addition, a discussion of some practical tips applicable to the preparation and conduct of an annual meeting is included. Although this handbook addresses issues primarily of concern to corporations with publicly traded securities, many of the same issues are also relevant to annual meetings of privately held corporations.

This handbook is not intended as a substitute for a careful review of the relevant provisions of: the federal securities laws, rules and regulations; the state corporate law applicable to the corporation; stock exchange or stock market rules and regulations; the corporation's charter and bylaws; and any resolutions of the board of directors of the corporation that may affect the annual meeting. Readers should review the laws, rules and regulations that govern their corporation in preparing for and conducting any meeting of shareholders, whether an annual meeting or a special meeting, and in preparing the required proxy solicitation materials.

DEVELOPMENTS IN THE LAW FOR THE 2006 PROXY SEASON

New laws are enacted each year that impact the proxy solicitation process and the conduct of the annual meeting of shareholders. In addition, the Securities and Exchange Commission (SEC) issues new rules and interpretations from time to time that influence proxy materials and annual meeting preparations. A description is provided below of the more significant legislative and regulatory developments for the 2006 proxy season in effect as of November 2005. The information provided is not, however, intended to be an exhaustive examination of the relevant statutory changes that may concern any particular corporation. In addition to statutory changes, decisions rendered in court cases often impact shareholders meetings and related proxy materials. Readers are urged to discuss their specific situations with legal counsel to ascertain the changes that may influence their annual meeting preparations.

The enactment of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley) in July 2002 gave impetus to a number of new and amended SEC and stock exchange rules relating to the proxy solicitation process, annual meetings of shareholders and corporate governance of public corporations. The vast majority of these new and amended rules took effect prior to the 2006 proxy season and generally apply to corporations (domestic and foreign) with securities registered under the Securities Exchange Act of 1934, as amended (Exchange Act), or that are required to file reports under the Exchange Act, though many also apply to corporations that have filed a registration statement under the Securities Act of 1933, as amended (Securities Act), which has not been declared effective by the SEC. Compared with the last few proxy seasons, the developments for the 2006 proxy season are minimal.

SHAREHOLDER PROPOSALS AND RULE 14a-8

In June 2005, the SEC issued Staff Legal Bulletin No. 14C (CF) (Bulletin No. 14C) that sought to identify issues and provide guidance regarding Rule 14a-8 of Regulation 14A, under which an issuer may seek to exclude a shareholder proposal or supporting materials. In particular, the SEC provided guidance on the application of Rule 14a-8(i)(6) (exclusion of proposals where the corporation would lack the power or authority to implement the proposal), Rule 14a-8(i)(7) (exclusion of proposals that deal with a matter relating to the corporation's ordinary business operations) and Rule 14a-8(l) (information that the corporation must include about a shareholder where the shareholder's proposal is included in the corporation's proxy materials).

Rule 14a-8(i)(6). Rule 14a-8(i)(6) is one of 13 substantive bases for a corporation to exclude a shareholder proposal from its proxy materials provided by Rule 14a-8(i). If a proposal submitted by a shareholder relates to a matter that if passed by the required shareholder vote the corporation would lack the power or authority to implement, then the corporation may exclude the proposal under Rule 14a-8(i)(6). In Bulletin No. 14C, the SEC provided an analysis of this rule as it relates to corporations' use of excluding proposals calling for director independence. The SEC explicitly narrowed its analysis and application of this rule to situations where the shareholder proposal calls for director independence at all times and the proposal provides no mechanism for the corporation to cure any loss of director independence. Only in these situations will the SEC allow such corporations to exclude the shareholder proposal on the grounds that the corporation lacks the power to ensure that all of its directors, including its chairperson, will continuously remain independent. As support for its analysis, the SEC stated that its approach is consistent with the SEC rules relating to director independence. As an example, the SEC pointed to Rule 10A-3 promulgated under the Exchange Act. Whereas Rule 10A-3 requires an audit committee to be comprised entirely of independent directors, it also contemplates that a director may cease to be independent and requires that a corporation have an opportunity to cure any non-compliance. The SEC also provided several examples of no-action requests and the SEC's responses, illustrating the narrow band in which the SEC will allow corporations to exclude shareholder proposals calling for director independence under Rule 14a-8(i)(6).

Rule 14a-8(i)(7). Another substantive basis for a corporation to exclude a shareholder proposal from its proxy materials is found in Rule 14a-8(i)(7), where a shareholder proposal relates to matters dealing with the corporation's ordinary business operations. The SEC states in Bulletin No. 14C that the mere fact a shareholder proposal relates to ordinary business matters does not give a corporation the absolute right to exclude such proposal. Instead, the SEC has stated in its Exchange Act Release No. 40018 (cited in Bulletin No. 14C) that a proposal may deal with a sufficiently significant social policy issue where the proposal would "transcend day-to-day business matters." As such, in analyzing a request to exclude a shareholder proposal under Rule 14a-8(i)(7), the SEC stated that it considers both the proposal and the supporting statement as a whole in order to determine whether the proposal relates to a significant social policy issue. The SEC narrowed its analysis of Rule 14a-8(i)(7) in Bulletin No. 14C to the specific circumstance where a proposal calls for an evaluation of internal risk that a corporation faces resulting from its operations that may be adversely affecting the environment or the public's health. In such situations, the SEC stated that it would concur with the corporation's no-action request to exclude the shareholder proposal, since the proposal falls under Rule 14a-8(i)(7) as it deals with the corporation's ordinary business operations. As with its analysis of Rule 14a-8(i)(6), the SEC provided a chart with examples of prior no-action requests and the SEC's responses to illustrate the narrow application of the rule in these specific circumstances.

Rule 14a-8(l). Should a corporation either decide to include a shareholder proposal in its proxy materials, or be required to do so, the corporation then is required to include certain information about the shareholder proponent. Under Rule 14a-8(l), the corporation is required to include the shareholder proponent's name and address, as well as the number of the corporation's voting securities that such shareholder proponent holds. However, in lieu of

providing such information, the corporation may state that it will provide such information to shareholders promptly upon receiving a request for the information. In Bulletin No. 14C, the SEC clarified that the exclusion of the shareholder information is a self-executing provision of the rule and as such, a corporation seeking to exclude the required information under Rule 14a-8(l) concerning a shareholder proponent need not submit a no-action request to the SEC. The SEC reminded corporations that in situations where such information is excluded the statement regarding the provision of the shareholder proponent information to any shareholder who so requests needs to be included in the proxy statement.

In addition to providing guidance under these specific subsections of Rule 14a-8, the SEC also clarified procedural issues relating to submitting shareholder proposal no-action requests to the SEC. The first clarification was the change in addresses for submitting a no-action request and shareholder responses since the SEC moved its headquarters in the Spring of 2005. The second procedural issue the SEC sought to clarify was the submission by shareholders of their proposals to corporations by facsimile. The SEC encouraged shareholders to use the facsimile number provided by the corporation in its most recent proxy statement to submit proposals or a response to a notice of defects. However, the SEC clarified that the shareholder is ultimately responsible for ensuring that the facsimile transmission has been received by the corporation; if the facsimile number is incorrect, the shareholder's proposal may be subject to exclusion on the basis that the proposal was not submitted within the prescribed time frame.

The third procedural clarification from the SEC in Bulletin No. 14C related to the materials required to be submitted to the SEC when a corporation either submits a no-action request or withdraws a no-action request. When a corporation submits a no-action request, the SEC reaffirmed its guidance that the corporation should provide the SEC with all relevant correspondence related to the shareholder proposal. This includes the shareholder proposal, any cover letters that the shareholder(s) provided with such proposal, any addresses and facsimile numbers of the shareholder proponent(s) and any other correspondence that the corporation has exchanged with the shareholder(s) related to the proposal (for example, any notices of defects sent to the shareholder(s) by the corporation and any such shareholder responses). When a corporation submits a letter withdrawing a no-action request for a proposal submitted by multiple shareholders, the SEC again reaffirmed its guidance that the corporation should include with its withdrawal letter to the SEC documents showing that each shareholder has agreed to withdraw the proposal. Additional guidance on this issue was provided by the SEC in Staff Bulletin No. 14, which initially explained Rule 14a-8 and the no-action process.

Finally, the SEC reaffirmed its procedure of transmitting no-action request responses by facsimile to corporations and shareholder proponents during the periods when the SEC receives the highest number of no-action requests. In addition, the SEC cautioned that a corporation or shareholder proponent may be able to find the SEC response to its no-action request on a commercial database prior to the corporation or shareholder proponent actually receiving the response from the SEC directly. This is due to the fact that the commercial services (for example, Global Securities Information, Inc.) routinely search the SEC Public Reference Room for new no-action responses (and other SEC correspondence) and may upload the response prior to the corporation or shareholder proponent receiving the response from the SEC.

THE LEGAL REQUIREMENT THAT AN ANNUAL MEETING BE HELD

The legal requirement that an annual meeting of shareholders be held and the rules and regulations governing preparation of proxy solicitation materials are found generally in the law of the corporation's state of incorporation, in Section 14(a) of the Exchange Act, in the rules and regulations promulgated by the SEC under the Exchange Act, in the rules and regulations promulgated by the stock exchange or stock market on which the corporation's stock is listed and in the corporation's charter or formation documents.

I. STATE CORPORATE LAWS

The requirement that a meeting of shareholders be held each year is initially a matter of the corporate law of the state in which the corporation is incorporated. Every state requires that a meeting of shareholders be held annually to elect directors and to transact other appropriate business, including, in many cases, obtaining the approval of the shareholders for fundamental corporate changes such as mergers, dissolutions or amendments of the corporation's articles or certificate of incorporation. Examples of state corporate statutes requiring annual meetings of shareholders include Section 602 of the New York Business Corporation Law and Section 600 of the California Corporations Code (CCC). In addition, Section 211 of the Delaware General Corporation Law (DGCL) requires an annual meeting be held to elect directors if they are not elected by written consent.

State law also governs many of the procedural aspects of the annual meeting of shareholders, including, among others, location, notice and record date requirements, quorum requirements, number of votes required for approval of matters about which state governments are concerned, the ability of shareholders to vote by proxy, the right of shareholders to review the corporation's shareholder list, the duties and powers of inspectors of election and the procedures for adjourning the meeting.

Although annual shareholders' meetings are usually held in person, most state statutes allow actions required or permitted to be taken at an annual meeting, including the election of directors, to be taken without a meeting upon the written consent of the shareholders. These statutory provisions typically provide that action may be taken without a meeting only if a consent in writing, setting forth the action to be taken, is signed by the holders of outstanding shares having at least the minimum number of votes required to take such action at the meeting. If a matter is approved by less than unanimous consent of shareholders without a meeting, these statutes typically also require that notice of the action be provided to the shareholders who did

not consent to the matter. If a public corporation wishes to take action by written consent, it must provide its shareholders with an information statement containing much of the same information included in the proxy statement described below.

If an annual meeting of shareholders is not held, state statutes generally provide that the directors must call a special meeting for the purpose of electing directors. A corporation's failure to hold an annual meeting also may trigger the rights of other parties. In Delaware, pursuant to Section 211 of the DGCL, the Court of Chancery, upon the application of any shareholder or director, may order a meeting if no annual meeting for the election of directors has been held for 13 months after the last annual meeting or for a period of 30 days after the date designated for the annual meeting. Other states provide that a specified percentage of the shares entitled to vote in the election of directors may demand the calling of a meeting for the election of directors.

II. FEDERAL SECURITIES LAWS

Although only state governments have historically been involved in regulating the annual meeting of shareholders and the proxy solicitation process, in more recent years the federal government has become more involved in the process, primarily through regulation of the proxy solicitation materials rather than the annual meeting itself. In Section 14 of the Exchange Act, Congress conferred on the SEC broad authority to enact appropriate rules and regulations to govern the proxy solicitation process. The SEC has used this authority to enact a comprehensive set of rules and regulations—also known as the "proxy rules"—intended to increase the availability of accurate information to assist shareholders in making informed decisions on whether or not to approve, reject or abstain from voting on matters presented at the annual meeting. The federal government has extended its regulation of proxy solicitations though the enactment of Sarbanes-Oxley.

The proxy rules establish the legal framework for the solicitation of proxies under the federal securities laws by regulating the form and substance of the proxy statement, the form of proxy and the annual report that are distributed to shareholders in connection with annual meetings of publicly held corporations. They also impose filing requirements on corporations or others engaged in proxy solicitations and regulate the distribution of proxy materials to the corporation's shareholders.

III. STOCK EXCHANGE RULES

Corporations with securities listed on the New York Stock Exchange (NYSE) or the American Stock Exchange (AMEX), or traded on The Nasdaq Stock Market (Nasdaq), must also comply with the applicable listing requirements of the relevant exchange or market. Each of these entities has requirements that listed corporations hold annual meetings—found in Section 302 of the NYSE Listed Company Manual, Section 4350(e) of the NASD Manual and Section 705 of the AMEX Company Guide—as well as requirements relating to notice of the record date for the meeting, the filing and distribution of the proxy material and the reporting to the entity of actions taken at the meeting.

The national stock exchanges and Nasdaq also regulate the types of matters that are required to be submitted to shareholders for approval and the communications between beneficial owners and street name owners, including the authority and procedures for some street name owners to vote proxies on behalf of beneficial owners. For additional information, readers are encouraged to review the relevant sections of the manual or guide of the exchange or market on which their stock is traded. The NYSE and Nasdaq proposed amendments to their respective corporate governance standards in response to the recent corporate governance scandals. In November 2003, these proposals were adopted by the SEC and became effective for corporations listed or seeking to become listed on the NYSE or Nasdaq. The NYSE and Nasdaq subsequently amended certain of these corporate governance standards in 2004.

IV. CORPORATE CHARTER AND BYLAWS

Most corporations also have charter and bylaw provisions that address a host of matters related to the annual meeting of shareholders. The more typical of these provisions include requirements as to the appropriate location, date and time of the annual meeting, the manner for calling the annual meeting, the proper notice required to be given to shareholders and the procedures for establishing a record date for the annual meeting.

Some less typical charter and bylaw provisions that may impact the annual meeting include super-majority voting requirements for some matters submitted to the shareholders, which may make it more difficult to obtain approval of the matter, and so-called "advance notice" provisions, which require director nominations and shareholder proposal submissions to be received by the corporation for consideration at the annual meeting prior to a specified date. These provisions allow the corporation to plan and conduct a more orderly annual meeting with fewer surprises.

FEDERAL PROXY RULES AND THE PROXY STATEMENT

I. APPLICATION OF THE PROXY RULES

A. BACKGROUND

The right of shareholders to appoint an agent to vote on their behalf at an annual meeting developed within the United States in the early 1800s. The right to proxy representation has since become an essential element in the progress of corporate democracy that has allowed for the tremendous growth in the size and number of publicly held corporations. This right is governed by state corporate law and the corporation's charter documents, nearly all of which now permit proxy voting.

By authorizing another person to act as an agent of the shareholder to vote on the proposals submitted at the annual meeting, proxy representation allows shareholders to participate in the corporate decision-making process even if they are unable to attend the annual meeting in person. Due to the broad geographic shareholder base of most public corporations, which makes it difficult for shareholders to attend and participate in the annual meeting in person, in recent years the proxy solicitation process, rather than the annual meeting, has become the primary means by which corporate governance is conducted and fundamental actions within the corporation are considered and approved. This process allows the corporation's management to seek approval of matters that require shareholder approval and compels them to make a yearly accounting of their operation of the corporation's business to the corporation's owners.

State corporate law and provisions found in corporate charter documents are generally silent on disclosure requirements for proxies and proxy solicitation materials, and until the 1930s, the federal government did not involve itself in the proxy solicitation process. The federal government first became involved in the proxy solicitation process with the adoption of the Exchange Act in 1934. In the Exchange Act, Congress authorized and required the SEC to, among other things, design appropriate rules and regulations regarding the solicitation of proxies "in the public interest and for the protection of investors."

In response to the broad rulemaking authority provided in the Exchange Act, the SEC promulgated Regulation 14A, "Solicitation of Proxies," and Schedule 14A, "Information Required in Proxy Statement"—the proxy rules. Readers should be aware that a review of Regulation 14A and Schedule 14A alone will not provide all of the information required to prepare proxy solicitation materials in compliance with the federal securities laws. Like other rules and regulations of the SEC, the proxy rules are part of the SEC's integrated disclosure system and reference various items found in other SEC regulations, including Regulation S-K. Since the adoption of the Exchange Act and the initial proxy rules, the SEC has played an active

role in the proxy solicitation process by reviewing solicitation materials and adopting new rules or amending the current rules. The federal securities laws also give the SEC broad enforcement tools, including monetary penalties for noncompliance and cease-and-desist orders.

B. SOLICITATION

The proxy rules do not apply to all proxy solicitations. The rules extend only to solicitations to holders of securities registered under Section 12 of the Exchange Act, regardless of whether such securities are actively traded at the time of the solicitation.

Entities whose securities are exempt from registration under Section 12 of the Exchange Act are generally also exempt from requirements of the proxy rules. Such entities include any of the following entities that do not have equity or debt securities traded on any stock exchange or market:

- savings and loan associations (and similar institutions subject to state or federal supervision);
- specified foreign corporations;
- agricultural and other similar cooperatives;
- insurance companies;
- banks; and
- non-profit corporations.

In determining what communications are governed by the proxy rules, it is first important to determine what is a "proxy" and what is a "solicitation" under federal securities law. The proxy rules contain a broad definition of proxy that includes any assignment of the power to vote or express consent or dissent with respect to any securities on behalf of the record owner of such securities. The proxy rules also define the term "solicitation" broadly in Rule 14a-1 of Regulation 14A to include any request for a proxy and any request to execute or not execute, or to revoke, a proxy. Thus, any communication requesting that shareholders execute, withhold or revoke a proxy will be treated as a solicitation within the meaning of the proxy rules. The definition of solicitation also includes any communication furnished to security holders under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy.

1. Actions not within the definition of solicitation

The proxy rules also exclude some activities from the definition of solicitation, such as furnishing a form of proxy to a shareholder upon an unsolicited request, performing actions required by the proxy rules relating to shareholder lists, mailing proxy materials and performing ministerial acts on behalf of a soliciting person. The SEC has also removed from the coverage of the proxy rules a public announcement by a shareholder of how the shareholder intends to vote on a particular matter and the reasons for such vote; provided that the shareholder is not

otherwise soliciting proxies; and provided further that the communication is made publicly, or is directed to persons to whom the shareholder owes a fiduciary duty in connection with voting, or is made in response to an unsolicited request for information. *See* Rule 14a-1(l) of Regulation 14A.

2. Solicitations exempt from one or more of the proxy rules

Although the definitions of proxy and solicitation have been broadly interpreted, the SEC has adopted amendments to the proxy rules to create safe-harbor exemptions for some solicitations and to exclude others from the definition of solicitation altogether. Private solicitations meeting the following requirements have been exempted from the application of the proxy rules:

- solicitations by persons with respect to securities carried in the person's name, in the name of the person's nominee (except as a voting trustee) or held in the person's custody;
- solicitations by persons in respect of securities of which the person is the beneficial owner;
- some solicitations in connection with offers and sales of securities registered under the Securities Act;
- solicitations in connection with actions taken under specified laws of the United States (such as the Public Utility Holding Company Act, the Bankruptcy Reform Act and others); and
- solicitations via newspaper advertisement that provide to shareholders nothing more than information regarding how to obtain the proxy statement, form of proxy and other proxy materials.

To qualify for these exemptions, the person making the subject solicitation must comply with additional conditions and requirements found in the proxy rules.

In an effort to increase participation in the proxy solicitation process by interested third parties, specifically institutional investors who the federal government determined to be well equipped to provide some protection to all security holders, the SEC has excluded the following types of solicitations from all of the proxy rules other than the anti-fraud provisions found in Rule 14a-9 of Regulation 14A and the shareholder list requirements of Rule 14a-7 of Regulation 14A:

- solicitations by persons not seeking the power to act as proxy for the shareholder at any time during the solicitation;
- the rendering of voting advice by financial advisors to persons with whom the financial advisor has a business relationship;
- solicitations made (other than by the corporation) to no more than ten persons; and
- solicitations in connection with roll-up transactions in which the soliciting party is engaging in preliminary communications with other security holders to determine whether or not to solicit proxies in opposition to such transaction.

These exemptions also require compliance with numerous conditions. Persons wishing to take advantage of any of the exemptions discussed above should thoroughly review the proxy rules for more information on use of these exemptions, particularly Rule 14a-2 of Regulation 14A, "Solicitations to Which §240.14a-3 to §240.14a-15 Apply."

3. Solicitation before furnishing a proxy statement

The proxy rules generally require the delivery of a proxy statement prepared in compliance with the proxy rules at or before any solicitation is made for a shareholder's proxy. The proxy rules also include a safe harbor exemption from the proxy delivery requirements that allows more communication among management and shareholders regarding matters submitted for consideration at an annual meeting so long as no proxy is solicited until a proxy statement is delivered. Under this safe harbor, written solicitations may be made prior to furnishing a proxy statement if the communication:

- is filed with the SEC on the date it is first used;
- identifies the soliciting parties and provides other specified information about the soliciting parties; and
- contains a prominent legend which, among other things, advises shareholders to read the proxy statement when it becomes available.

To take advantage of this safe harbor, additional requirements must be met. Among others, the soliciting party may not deliver a proxy before a definitive proxy statement complying with the proxy rules is also delivered to the shareholders. *See* Rule 14a-12 of Regulation 14A.

4. Prohibited solicitations

While establishing requirements relating to permitted proxy solicitation activities, the proxy rules entirely prohibit the solicitation of any undated or post-dated proxies or any proxies that provide for a deemed effective date that is subsequent to the date on which the proxy is signed by the shareholder. *See* Rule 14a-10 of Regulation 14A.

II. THE PROXY STATEMENT

Rule 14a-3 of Regulation 14A requires that each shareholder receive a proxy statement in connection with any solicitation of the shareholder's proxy. The proxy rules contain detailed requirements concerning the contents and form of a proxy statement. Although the proxy rules contain line item requirements as to information that must be included, only responses to the line items concerning matters to be acted upon at the annual meeting must be included.

A. NOTICE OF THE MEETING

State corporate law establishes the requirement that shareholders receive adequate notice of the annual meeting and that a record date be fixed for the meeting. Under state corporate law,

written notice of the meeting must generally be given to all shareholders not more than nor fewer than a fixed number of days before the date of the meeting. For example, Delaware and California corporate law require notice of an annual meeting be provided not more than 60 nor fewer than ten days prior to the annual meeting (DGCL Section 222 and CCC Section 601). The same or a similar time period applies to the fixing of the record date by the corporation's board of directors. Many state corporate laws also allow a corporation to close the transfer books of the corporation some number of days prior to the annual meeting in lieu of setting a record date. Closing the transfer books interferes with trading markets, so most corporations choose to establish a record date instead. The corporate law of some states now allows corporations to deliver a single notice to numerous shareholders that reside at the same address if specified conditions are met. *See* "Federal Proxy Rules and the Proxy Statement—Distribution of Proxy Materials to Shareholders—Householding."

Several factors should be considered in determining the amount of advance notice given to shareholders, including:

- the dates required by stock exchange organizations for mailing the annual report (because most corporations mail the proxy materials and the annual report together to reduce expenses, the date for mailing the annual report often influences the notice date for the annual meeting);
- the types of matters to be considered at the annual meeting (the consideration of controversial matters may require additional time to solicit proxies); and
- the requirement that corporations ensure that soliciting materials be provided to beneficial owners (broker-dealers and banks are obligated to forward proxy materials to beneficial owners within five business days of receipt if the corporation meets requirements specified in the proxy rules and provides reasonable assurance of reimbursement of expenses).

The bylaws of the corporation may also contain provisions governing the delivery of notice and establishment of a record date for an annual meeting, some of which may be more restrictive than the requirements of state law. Stock exchange or stock market listing rules also need to be consulted as they often require notice to the exchange or market of the record date and annual meeting date. These provisions should be reviewed in preparing the notice section of the proxy statement.

It is common to begin the proxy statement with the official notice of the annual meeting. The notice of the annual meeting and the section immediately following the notice usually provide the following information required to be included in the proxy statement:

- the date, time and place of the annual meeting (or if action is to be taken by written consent, the date by which consents are to be submitted) (Item 1 of Schedule 14A);
- the mailing address of the principal executive office of the corporation (Item 1 of Schedule 14A);

- the date on which the proxy statement and form of proxy are first sent or given to shareholders (Item 1 of Schedule 14A);
- whether the proxy may be revoked and the procedure for revoking it (Item 2 of Schedule 14A);
- whether the shareholder has dissenter or appraisal rights and, if so, the procedures for exercising such rights (Item 3 of Schedule 14A);
- information relating to the person making the solicitation (Item 4 of Schedule 14A);
- the method by which the solicitation will be made, the anticipated costs of the solicitation and how such costs will be borne (Item 4 of Schedule 14A);
- the number of shares outstanding of each class of voting securities entitled to be voted at the annual meeting, as well as the number of votes to which each class is entitled (Item 6 of Schedule 14A);
- the record date for the meeting (Item 6 of Schedule 14A); and
- whether cumulative voting rights are involved and, if so, information describing the cumulative voting rights, the conditions precedent to their exercise, and whether discretionary authority to cumulate votes is solicited (Item 6 of Schedule 14A).

As an alternative, some corporations prepare a separate notice that accompanies the proxy statement in the mailing to shareholders.

B. VOTING INFORMATION

The proxy rules also require a description of the voting procedures relating to each matter submitted to a vote of shareholders. Specifically, the proxy statement must state the vote required for approval or election (other than for the approval of auditors) of each proposal and the method by which votes will be counted, including the treatment and effect of abstentions and broker non-votes under applicable state corporate law and the corporation's charter and bylaws. A "broker non-vote" occurs when a broker is unable to vote on a particular matter without instructions from the beneficial holder and such instructions are not received. Typically, abstentions and broker non-votes are not considered "votes cast" on the proposal, and therefore, they do not affect proposals that require the affirmative vote of a majority of the votes cast on the proposal, whereas they have the effect of votes "against" proposals requiring the affirmative vote of a majority of outstanding shares. Abstentions and broker non-votes are generally considered present at the meeting for purposes of determining whether a quorum is present. *See* Item 21 of Schedule 14A.

C. INFORMATION ABOUT DIRECTORS, DIRECTOR NOMINEES AND EXECUTIVE OFFICERS

If action is to be taken at an annual meeting with respect to the election of directors, the proxy rules require a variety of information about the corporation's directors, executive officers

and persons nominated to become a director or executive officer to be provided in tabular form to the extent practicable. Item 7 of Schedule 14A cross references Item 401 of Regulation S-K, which requires a description of:

- each person's name, age and position(s) and/or office(s) held with the corporation;
- the term of office and the period the office has been held;
- any arrangement between the director, executive officer or person nominated to become a director or executive officer and any other person(s) pursuant to which the director, executive officer or person nominated to become such was or is to be selected to his or her position or office;
- any family relationship between a director, executive officer or person nominated to become such;
- a brief five-year history of the business background of each director, executive officer or person nominated to become such, including any other public corporation directorships held by the person; and
- a description of any legal proceedings that would be material to an evaluation of the ability or integrity of any director, director nominee or executive officer and that occurred within the five years prior to the time of the proxy solicitation.

If the corporation provides this information regarding executive officers in its Annual Report on Form 10-K under the caption "Executive Officers of the Registrant," the information need not also be provided in the proxy statement. Alternatively, such information may be incorporated by reference into the corporation's Annual Report on Form 10-K if it is contained in a definitive proxy statement that involves the election of directors and is filed with the SEC within 120 days after the end of the fiscal year covered by the Form 10-K. *See* Instruction G to Form 10-K.

The proxy rules also require that the proxy statement describe any transactions or relationships between the corporation and any director, director nominee, executive officer or principal shareholder or between the corporation and entities affiliated with these persons.

D. BOARD OF DIRECTORS AND COMMITTEE INFORMATION

Proxy statements also must include information regarding the function of the board of directors of the corporation. The proxy statement must state the total number of board meetings (including regularly scheduled meetings and special meetings) held during the preceding fiscal year, whether or not any director attended fewer than 75 percent of the board meetings and meetings of committees of the board on which the director served and the name of any director failing to attend 75 percent of such meetings. The proxy statement also must indicate whether the corporation has standing audit, nominating and compensation committees, or committees performing similar functions. If such committees exist, the corporation must provide a description of the functions performed by such committee, the identity of each committee member and the number of committee meetings held during the preceding fiscal year. In the case of the nominating or similar committee, the proxy statement must state whether the committee

will consider nominees recommended by security holders, and, if so, describe the procedure for submitting recommendations. *See* Item 7 of Schedule 14A. One item to keep in mind is the related disclosures in quarterly and annual reports if there has been a material change to the corporation's procedures for security holder director nominations. Such a change will need to be reported in the corporation's Quarterly Report on Form 10-Q or Annual Report on Form 10-K. The SEC has stated that the adoption of procedures by which security holders may recommend director nominees, where the corporation previously disclosed that it did not have in place such procedures, will constitute a material change.

The proxy rules also provide that (1) if any director has resigned or declined to stand for reelection since the date of the last annual meeting because of a disagreement with management over the corporation's operations, policies or practices and (2) if the former director requests disclosure of the matter, then the corporation must include within the proxy statement a summary of the director's description of the disagreement and must state the date of the resignation or declination to stand for reelection. If the corporation believes that the director's description is inaccurate, the proxy rules allow the corporation to include a brief statement presenting its views of the disagreement. *See* Item 7 of Schedule 14A.

The composition and duties of audit committees and nominating committees were modified by the adoption of Sarbanes-Oxley and the amended corporate governance standards of the NYSE and Nasdaq. Although Sarbanes-Oxley does not directly modify proxy disclosure requirements, several of its provisions required new or modified disclosures under the proxy rules. This impact is discussed briefly below under "Federal Proxy Rules and the Proxy Statement—The Proxy Statement—Audit Committee Disclosure; Nominating Committee Disclosure." For a full understanding of the impact of Sarbanes-Oxley on corporate governance and proxy disclosure obligations, readers should thoroughly review the provisions of Sarbanes-Oxley and consult with legal counsel regarding its impact on their particular corporation.

E. EXECUTIVE COMPENSATION DISCLOSURE

The proxy rules require extensive disclosures about the compensation paid by public corporations to certain of their executive officers. These so-called "named executive officers" are defined in the proxy rules to include: (1) any person who served as the chief executive officer of a corporation at any time during the prior fiscal year; (2) the corporation's four most highly compensated executive officers, other than the CEO, whose salary and bonus exceeded $100,000 and who were executive officers as of the end of the preceding fiscal year; and (3) up to two additional persons who would have qualified as one of the corporation's four most highly compensated executive officers had they been executive officers of the corporation at the end of such fiscal year. The information relating to the named executive officers' compensation must be presented, to the extent applicable, in tabular form in the tables described below. However, the proxy rules allow disclosure not to be made in response to the requirements of Item 402 of Regulation S-K if the disclosure relates to a transaction between the corporation and a third party with the primary purpose of furnishing compensation to a named executive officer and if the disclosure is provided elsewhere in the proxy statement in accordance with Item 404 of Regulation S-K (*See* "Federal Rules and the Proxy Statement—the Proxy Statement—Certain

Relationships and Related Transactions"). The information presented below is a summary of the general provisions of the proxy rules related to compensation disclosure. Because these terms and provisions are complex and often difficult to understand, readers are urged to review the proxy rules (specifically Item 8 of Schedule 14A and Item 402 of Regulation S-K) for more information relating to executive compensation disclosure in proxy statements.

1. Summary Compensation Table

The "Summary Compensation Table" is the principal table prescribed for use in presenting compensation information for the named executive officers. The Summary Compensation Table, which provides a comprehensive overview of executive compensation, must include, in addition to the name and other descriptive information, a description of the annual compensation, long-term compensation and "all other compensation" paid to or earned by the named executive officers during the three preceding fiscal years. *See* Item 402(b) of Regulation S-K.

Under the proxy rules, annual compensation generally consists of the dollar value of cash and non-cash salary and bonus compensation earned during the covered fiscal year and any "other annual compensation," which is not properly categorized as salary or bonus. Other annual compensation includes (1) perquisites and other personal benefits valued in excess of the lesser of $50,000 or ten percent of the named executive officer's reported annual salary and bonus and (2) any above-market or preferential earnings on deferred compensation and any earnings on long-term incentive plan compensation, tax payment reimbursements and preferential stock purchase discounts. If perquisites are required to be disclosed, each perquisite exceeding 25 percent of the total perquisites for a named executive officer must also be identified by type and amount in an accompanying footnote or textual disclosure.

Long-term compensation generally consists of (1) the dollar value (net of consideration paid by the named executive officer) of restricted stock awards, (2) the sum of the number of securities underlying stock options and stock appreciation rights (SARs) granted to the named executive officer and (3) the dollar value of all payouts from long-term incentive plans.

The "all other compensation" category requires the disclosure of any compensation paid to a named executive officer that cannot be properly reported under any other column of the Summary Compensation Table. The proxy rules require that any compensation reported in the "all other compensation" column must be identified and quantified in a footnote. If an award or benefit is required to be reported in a separate compensation table in the proxy statement, the proxy rules provide that it is not required to also be reported as "all other compensation."

2. Companion compensation tables

Proxy statements must also disclose in several additional tables other compensation paid to or earned by the named executive officers.

Corporations must disclose in the "Option/SAR Grant Table" information regarding grants of stock options and freestanding SARs made to each named executive officer in the last completed fiscal year and the potential realizable values of such grants, including, among other

things, the number of securities underlying the option grants, the percentage the grant represents of all options granted to the corporation's employees, the per-share exercise price of the options granted, the expiration date of the options or SARs and the potential realizable value of the options. Information regarding the material terms of the grant, such as the date of exercisability, any performance-based conditions to exercisability and any tax reimbursement features must also be set forth in a footnote to the table. Many corporations also include a footnote stating that the assumed five percent and ten percent rates of stock appreciation are rates required by the SEC for illustrative purposes and are not intended to predict actual stock appreciation. *See* Item 402(c) of Regulation S-K.

In the "Aggregated Option/SAR Exercises and Fiscal Year-End Option/SAR Value Table," corporations are required to provide, on an aggregated basis, information concerning any option exercises made by each of the named executive officers during the most recently completed fiscal year and year-end information related to stock options owned by each named executive officer. *See* Item 402(d) of Regulation S-K.

Awards under long-term incentive plans (not payouts, which are reported in the Summary Compensation Table) during the previous fiscal year are reported in the "Long-Term Incentive Plan (LTIP) Awards Table." This table requires disclosure of, among other things, the number of shares or other rights awarded, the manner in which the award will mature and, for plans not based on stock price, information related to the dollar value of the award. Footnote disclosure is also required to provide the material terms of each award. *See* Item 402(e) of Regulation S-K.

The "Pension Plan Table" requires corporations to disclose the estimated annual benefits payable to any named executive officer under a retirement plan that determines benefits based on the final compensation and years of service of the named executive officer. The proxy rules also require additional descriptive information about the retirement benefits. For retirement plans that do not determine benefits based on the final compensation and years of service, the corporation must describe in narrative form the formula by which benefits are calculated and the estimated annual benefits payable upon retirement at normal retirement age for each named executive officer. *See* Item 402(f) of Regulation S-K.

If the corporation amends or adjusts the exercise price of stock options or SARs granted to named executive officers during any fiscal year, in addition to disclosure of the reasons for the adjustments by the compensation committee, the proxy rules require disclosure concerning all re-pricings during the prior ten fiscal years, including a table entitled "Ten-Year Option/SAR Repricings." *See* Item 402(i) of Regulation S-K.

F. COMPENSATION COMMITTEE REPORT

The proxy statement must also include a report by the compensation committee of the board of directors (or, in the absence of such committee, the entire board of directors) describing the committee's compensation policies with respect to the corporation's executive officers, including a discussion of the relationship of the corporation's performance to the executive compensation over the last completed fiscal year. In addition, the report must discuss the basis

for the compensation of the corporation's CEO for the last completed fiscal year and a discussion of the relationship between the performance of the corporation and the compensation paid to the CEO, describing each measure of the corporation's performance, whether qualitative or quantitative, on which such compensation was based. *See* Item 402(k) of Regulation S-K.

The report also generally includes a discussion of the impact, if any, of Section 162(m) of the Internal Revenue Code on the deliberations of the compensation committee relating to executive compensation, including a description of any compensation paid to the CEO or any named executive officer that is not allowable as a tax deduction because of Section 162(m). Section 162(m) disallows the deduction available to public corporations for compensation paid to executive officers in excess of $1 million, excluding any qualified performance based compensation that is paid pursuant to pre-established performance goals under a shareholder-approved compensation plan.

The proxy rules require the compensation committee report to be included only in proxy statements for meetings at which directors are to be elected. Further, the compensation committee report must be presented over the names of the committee members. *See* Item 402(k) of Regulation S-K. Because directors are ordinarily elected at annual meetings, the compensation committee report is generally included in proxy statements for the annual meeting of shareholders. A sample compensation committee report is included in this handbook as Appendix B. *See* page B-1.

G. DIRECTOR COMPENSATION DISCLOSURE

The proxy rules also require disclosure of information relating to standard arrangements pursuant to which directors of the corporation are compensated for any services provided as a director, including amounts paid for committee participation or special assignments. In addition, the proxy rules require a description of any other arrangements pursuant to which any director was compensated during the last completed fiscal year. The disclosure must identify the specific amounts received by the director under the standard or other compensation arrangements. The SEC also has stated that these requirements include the disclosure of agreements by the corporation to make donations to a charitable organization in the name of a director, so-called "charitable award" or "director legacy" programs, after the death or retirement of the director. *See* Item 402(g) of Regulation S-K.

H. BENEFICIAL OWNERSHIP INFORMATION

The proxy statement must also include information relating to the beneficial ownership of securities of the corporation by the named executive officers, the corporation's directors and director nominees (naming them), holders of more than five percent of any class of the corporation's voting securities and all directors and executive officers of the corporation as a group (without naming them). *See* Item 5 of Schedule 14A and Item 403 of Regulation S-K. The required information regarding beneficial ownership of the corporation's securities includes:

- the title of the class of securities;
- the name and address of the beneficial owner;

- the amount and nature of the beneficial ownership; and
- the percentage of the class of securities so owned.

Under the proxy rules, "beneficial ownership" is determined in accordance with Rule 13d-3 promulgated under the Exchange Act, which defines a beneficial owner as a person with possession of sole or shared voting power or investment power with respect to the securities. "Voting power" is defined to include the power to vote or direct the vote of a security, and "investment power" is defined to include the power to dispose or direct the disposition of a security. A person is also deemed to have beneficial ownership of all securities that the person has the right to acquire within 60 days of the determination date through the exercise or conversion of an option, warrant or other security. Securities that are the subject of a voting trust, proxy, power of attorney or other similar agreement are also deemed to be "beneficially owned" for purposes of proxy statement disclosure.

Although the corporation collects the required information about directors and executive officers through the use of annual questionnaires sent to them by the corporation, the information regarding five percent holders may be more difficult to obtain if the five percent holders are not officers or directors. In such an event, the corporation can obtain this information from statements filed with the SEC by such parties. The proxy rules specifically provide that the corporation may rely upon information set forth in such statements unless the corporation knows or has reason to believe that the information is not complete or accurate, or that a statement or amendment should have been filed and was not.

I. SECTION 16 REPORTS

The federal securities laws contain requirements that each director, executive officer and holder of ten percent or more of any class of a corporation's equity securities file with the SEC reports disclosing transactions by such persons in the corporation's securities. A failure to file these reports on a timely basis during the corporation's last completed fiscal year must be disclosed in the proxy statement under a caption entitled "Section 16(a) Beneficial Ownership Reporting Compliance." In addition, where a corporation is incorporating by reference certain information disclosed in the proxy that is required in the corporation's Annual Report on Form 10-K, the corporation may have to disclose on the front page of its Annual Report on Form 10-K that it will be reporting such delinquency. The disclosure must include the identity of each person failing to make a report, the number of reports filed late, the number of untimely reported transactions and any known failure to file a required report. The proxy rules specifically allow the corporation to rely upon a review of Forms 3, 4 and 5, and amendments thereto, submitted to it, as well as any written representations from the persons required to make such filings that no Form 5 is required. *See* Item 7 of Schedule 14A and Item 405 of Regulation S-K.

Sarbanes-Oxley, and the rules issued by the SEC thereunder, accelerated the dates by which Section 16 reports must be filed following most transactions in the corporation's securities by directors, executive officers and ten percent holders to two business days following the transaction and require that all Section 16 reports be filed with the SEC electronically. The

accelerated filing requirements became effective in August 2002 and the electronic filing requirements became effective in June 2003. Persons responsible for preparing the corporation's proxy materials should review insiders' transactions carefully to ensure compliance with the new accelerated filing requirements and report in the proxy statement any failures.

J. AUDIT COMMITTEE DISCLOSURE

The proxy rules require significant disclosures about the composition and function of the audit committee, including the following:

- if the corporation's securities are listed, a statement whether the members of the audit committee are "independent," within the meaning of the listing standards applicable to the corporation;
- if the audit committee includes a director who is not independent, the corporation must disclose the nature of the relationship that makes the individual not independent and the reasons the board appointed such person to the audit committee;
- if the corporation's securities are not listed, a statement whether the corporation has an audit committee established in accordance with the Exchange Act, and if so, whether the members of the committee are "independent," within the meaning of the listing standards of any registered national securities exchange or association; provided that the listing standards used are applied consistently to all members of the committee; and
- whether the board of directors has adopted a written charter for the audit committee (if so, the charter must be included as an appendix to the proxy statement if not attached in the previous three years).

Pursuant to the requirements of Sarbanes-Oxley, the SEC enacted Rule 10A-3 promulgated under the Exchange Act. Rule 10A-3 requires national securities exchanges and associations such as the NYSE and Nasdaq to decline to list securities of any corporation that fails to comply with certain audit committee requirements mandated by Sarbanes-Oxley. The NYSE and Nasdaq have adopted corporate governance rule changes that parallel and expand the requirements of Rule 10A-3 and Section 10A(m) of the Exchange Act. Listed corporations were required to begin complying with the new listing requirements beginning in 2004. The following discussion explains the general requirements of Rule 10A-3 and identifies certain variations in the new NYSE and Nasdaq rules. In addition, differences exist in the application and content of Rule 10A-3 and the NYSE and Nasdaq requirements as they apply to investment companies and foreign private issuers. Such companies should consult legal counsel for additional information.

1. Audit committee independence

Rule 10A-3 requires all audit committee members to be independent. Under the rule, audit committee members may not accept any consulting, advisory or other compensatory fee from the

corporation or any of its subsidiaries. Thus, the rule prohibits payments to an audit committee member for services as an officer, employee or consultant of the corporation, but does not forbid an audit committee member from accepting payments for service as a director or member of any board committee or under a retirement plan. The rule also prohibits indirect compensation by prohibiting payments to current spouses, minor children or stepchildren or children or stepchildren currently sharing a home with the audit committee member. The NYSE and Nasdaq rules broaden this prohibition by also forbidding payments to additional family members, including parents, adult children, mothers-and fathers-in-law, sons-and daughters-in-law, sisters-and brothers-in-law and anyone (other than domestic employees) residing in the audit committee member's home. Rule 10A-3 further restricts indirect compensation by prohibiting payments to certain associated entities of which the audit committee member is currently a partner (unless merely a limited partner) or member, serves as a managing director or executive officer or occupies a similar position. Such associated entities include entities that provide accounting, consulting, legal, investment banking or financial advisory services to the corporation or any of its subsidiaries.

Rule 10A-3 also forbids any person affiliated with the corporation or any of its subsidiaries from serving on the audit committee. With respect to this requirement, the SEC adopted a safe harbor that excludes any person or entity from affiliate status if that person or entity is not an executive officer or shareholder owning ten percent or more of any class of voting equity securities of the corporation. Additionally, Rule 10A-3 excludes outside directors and passive owners of an affiliate of the corporation from automatic designation as affiliates themselves. Automatic designation as an affiliate does apply to executive officers, directors who are also employees of an affiliate, and general partners and managing members of an affiliate.

The NYSE and Nasdaq rules apply the following additional independence criteria:

- the rules require the board of directors of each listed corporation to affirmatively determine that each audit committee member has no material relationship with the corporation that would jeopardize the director's ability to exercise independent judgment;
- the rules prohibit any person who is employed or whose family member is employed as an executive officer of another corporation from serving on the corporation's audit committee if at any time within the past three years any of the corporation's executive officers served on the compensation committee of the other corporation;
- under the rules, any person who is or whose family member is employed by or affiliated with any of the corporation's current or former auditors, and under Nasdaq's rules, any person who has helped to prepare the corporation's or any of its subsidiaries' financial statements, may not serve on the audit committee until three years after that affiliation or employment relationship ends, and under NYSE's rules, any person with an immediate family member who is a partner in the corporation's auditing firm, regardless of that person's position in a "professional capacity" at the firm, will not be considered independent;

- the rules prevent audit committee service by persons having certain employment or ownership relationships with organizations that pay significant sums to or receive significant sums from the corporation (the precise level of those sums varies under the rules of each of the NYSE and Nasdaq, but both rules state such sums in terms of absolute amounts and percentages of consolidated gross revenue); and
- although Rule 10A-3 contains no look-back period for its independence requirements, both the NYSE (with a limited transition period) and Nasdaq rules include a three-year look-back period applicable to all of the independence criteria, even those that parallel the Rule 10A-3 requirements.

Rule 10A-3 and the NYSE and Nasdaq rules contain various exemptions from the independence requirements. The rules exempt new public corporations from the independence requirements for a limited transition period. Under the exemption, a new public corporation must have one independent audit committee member at the time of its initial listing, a majority of independent members within 90 days and a fully independent committee within one year. Moreover, under the Nasdaq rules, an audit committee member who fails to meet the Nasdaq independence requirements may still serve (for no more than two years) on the audit committee if (1) the director otherwise meets the requirements of Section 10A(m)(3) of the Exchange Act and the associated rules, including Rule 10A-3, (2) neither the director nor any of his or her family members is a current officer or employee of the corporation, (3) the board of directors determines that the corporation's best interests are furthered by the director's service on the audit committee and (4) the board discloses the reasons for its determination and the nature of the relationship between the corporation and the audit committee member in the next annual proxy statement (or Annual Report on Form 10-K if the corporation does not file a proxy statement). The Nasdaq rules also allow audit committee members who cease to be independent for reasons outside their control to continue to serve on the audit committee until the next annual shareholders meeting or one year, whichever period is shorter, provided that the corporation notifies Nasdaq immediately.

(a) Responsibility for the appointment, compensation, retention and oversight of the work of independent accountants

Rule 10A-3 requires public corporation audit committees to assume responsibility for hiring, overseeing and terminating the independent accountants engaged to prepare or issue an audit report or perform other audit, review or attest services for the corporation. Such services include all of the services encompassed by the "Audit Fees" category in the corporation's disclosure of fees paid to its independent accountants, such as services necessary to perform an audit, comfort letters, statutory audits and assistance with documents filed with the SEC. *See* "Federal Proxy Rules and the Proxy Statement—The Proxy Statement—Disclosure Related to Independent Auditors."

This provision of Rule 10A-3 does not preempt any law of the corporation's governing jurisdiction that might require or permit shareholders, the board of directors as a whole, a tribunal or any other governmental entity to select or oversee the corporation's outside auditors.

In the case of such an apparent conflict, the audit committee must, to the extent permitted by the corporation's governing law, recommend outside auditors to the shareholders or board of directors.

The NYSE and Nasdaq corporate governance rules require an audit committee to perform certain additional duties that must be set forth in the audit committee charter. These duties relate largely to holding regular discussions with management and independent auditors about matters pertaining to risk management or audit problems and issues. Corporations requiring additional information about such matters should consult legal counsel.

(b) Funding for the operation of the audit committee

Under Rule 10A-3, the audit committee determines the extent of funding that the corporation must provide to it. The funds provided to the audit committee should be sufficient to compensate the corporation's independent auditors engaged and overseen by the audit committee, to compensate any advisors engaged by the audit committee and for ordinary administrative expenses necessary or appropriate for the audit committee to carry out its duties.

(c) Exemptions from compliance; disclosure requirements

Rule 10A-3 contains a number of exemptions from compliance with requirements of the rule, including exemptions for boards of auditors of foreign private issuers, foreign government issuers, overlapping boards, security futures products, standardized options, asset-backed issuers, unit investment trusts and multiple listings. Corporations must disclose their reliance on these exemptions in annual reports and proxy statements for shareholders meetings at which directors will be elected. Such corporations must also disclose whether and how reliance on the exemption will materially adversely affect the audit committee's ability to act independently and otherwise comply with Rule 10A-3. These disclosure requirements apply to all exemptions under Rule 10A-3 other than:

- the exemption for unit investment trusts;
- subsidiaries relying on the multiple listing exemption;
- the exemption for overlapping boards;
- the exemptions for securities futures products and standardized options;
- the exemption for securities issued by foreign governments; and
- the exemptions for securities issued by asset-backed issuers and similar passive issuers.

Rule 10A-3 also modifies certain existing disclosure requirements. For instance, the disclosure about audit committee members that corporations must presently include in proxy statements must now appear or be incorporated by reference in the listed corporation's Annual Report on Form 10-K. Related to this requirement, Rule 10A-3 deems a corporation's entire board of directors to be the audit committee in the absence of a separately designated audit

committee and requires such a corporation to state in its disclosure that the entire board of directors serves as the audit committee. However, the rule does not require such a corporation to comply with this requirement if the corporation is not required to disclose its reliance on an exemption under Rule 10A-3, as discussed above.

Additionally, Rule 10A-3 requires corporations with securities listed on a national securities exchange or an automated inter-dealer quotation system of a national securities association (such as the NYSE and Nasdaq) to disclose in proxy statements for shareholder meetings at which directors will be elected whether their audit committee members are independent according to the definition in the applicable listing standards, and corporations with non-listed securities must disclose whether their audit committee members are independent according to any SEC-approved definition of independence developed by a national securities exchange or association (the rules further require the corporation to state which definition it chose and to apply that definition consistently in making independence determinations).

2. Audit committee report

Each proxy statement relating to an annual meeting at which directors are to be elected must also contain an audit committee report, which must state that:

- the audit committee has reviewed and discussed the audited financial statements with management;
- the audit committee has discussed with the independent accountant the matters required to be discussed by Statement on Auditing Standards 61, which includes a review of the findings of the independent accountant during its examination of the corporation's financial statements;
- the audit committee has received the written disclosures and the letter from the independent accountant required by Independence Standards Board Standard No. 1, and has discussed with the independent accountant the independent accountant's independence; and
- based on the above review and discussions, the audit committee recommended to the board of directors that the audited financial statements of the corporation be included in the Annual Report on Form 10-K for the last fiscal year for filing with the SEC.

Like the compensation committee report found elsewhere in the proxy statement, the audit committee report must appear over the names of each audit committee member. *See* Item 7 of Schedule 14A and Item 306 of Regulation S-K. A sample audit committee report is included in this handbook as Appendix C. *See* page C-1.

K. NOMINATING COMMITTEE DISCLOSURE

The SEC's disclosure rules regarding nominating committees are contained in paragraph (d)(2) of Item 7 of Schedule 14A. As with other Item 7 disclosures, the nominating committee

disclosures are required in proxy materials relating to any meeting at which directors will be elected. The rules require proxy materials prepared by public corporations to indicate whether the corporation has a standing nominating committee (or a committee performing similar functions) and, if not, why the board of directors believes that operating without a nominating committee is appropriate and who among the board members considers director nominees. In addition, the rules require proxy statements to provide the following information regarding the corporation's director nomination process:

- if the nominating committee has a charter, the corporation is required to disclose whether a current copy of the charter is available to shareholders on the corporation's website, and if so, to provide the website address. If a current copy of the charter is not available on the corporation's website, the corporation must include a copy of the charter as an appendix to its proxy statement at least once every three fiscal years. If a current copy of the charter is not available on the corporation's website, and is not included as an appendix to its current proxy statement, the corporation must identify in which of the prior proxy statements the charter was included;

- if the nominating committee does not have a charter, the corporation is required to make a statement to that effect;

- a corporation with securities listed on a national securities exchange or an automated inter-dealer quotation system of a national securities association with independence requirements for nominating committee members is required to disclose whether the members of its nominating committee are independent under the listing standards of the applicable national securities exchange or association;

- a corporation with non-listed securities is required to disclose whether the members of its nominating committee are independent according to any SEC-approved definition of independence in the listing standards of a national securities exchange or association (the rules further require the corporation to state which definition it chose and to apply that definition consistently in determining the independence of nominating committee members and audit committee members);

- the corporation is required to describe the material terms of any nominating committee policy that governs the consideration of shareholder-recommended director candidates, including a statement as to whether the nominating committee will consider director candidates recommended by shareholders;

- if the nominating committee does not have a policy with regard to consideration of director candidates recommended by shareholders, the corporation must so state that fact;

- if the nominating committee will consider candidates recommended by shareholders, the corporation must describe the procedures by which shareholders can recommend director candidates;

- the corporation must also describe any specific, minimum qualifications that a nominating committee-recommended candidate must meet for a position on the corporation's board of directors as well as any qualities or skills that the nominating committee believes are prerequisites to board membership;
- the corporation must describe the process by which the nominating committee identifies and evaluates nominees and any particularities in the process arising in the case of shareholder-recommended nominees;
- for each non-incumbent nominee (other than current executive officers) who received nominating committee approval for inclusion in the corporation's proxy card, the corporation must state which one or more of the following categories of persons or entities recommended that nominee: security holder, non-management director, chief executive officer, other executive officer, third-party search firm or other specified source;
- the corporation must disclose the functions performed by any third party that the corporation pays to help identify or evaluate director nominees; and
- if the nominating committee received a nominee recommendation within the timeframe required by the rules from a shareholder beneficially owning more than five percent of the corporation's voting common stock for at least one year as of the date of the recommendation (or from a group of shareholders beneficially owning, in the aggregate, more than five percent of the voting common stock, with the securities used to calculate that ownership held for at least one year as of the date of the recommendation), the corporation is required to identify the candidate and the shareholder (or shareholder group) that recommended the candidate and disclose whether the nominating committee chose to nominate the candidate; provided, however, that no such identification or disclosure is required without the written consent of both the shareholder or shareholder group and the candidate to be so identified.

L. SHAREHOLDER COMMUNICATIONS WITH THE BOARD OF DIRECTORS

As with the shareholder nomination disclosures and other Item 7 disclosures, the disclosures regarding shareholder communications with directors of public corporations are required in proxy materials relating to any meeting at which directors will be elected. The rules require the corporation's proxy materials relating to director election to:

- disclose whether the corporation provides a process by which shareholders may send communications to the board of directors and, if not, why the board believes it is appropriate not to have such a process;
- if the corporation does have such a process, the corporation must:
    - state the manner in which shareholders should send communications to the board and, if applicable, to specified individual directors; and

- if all shareholder communications are not sent directly to directors, describe the corporation's procedure for determining which shareholder communications will be delivered to directors; and

- describe the corporation's policy, if any, with regard to board members' attendance at annual shareholders meetings and state the number of board members who attended the prior year's annual meeting.

M. DISCLOSURE RELATED TO INDEPENDENT AUDITORS

Under Item 9 of Schedule 14A, proxy statements related to annual meetings at which directors are to be elected (or special meetings or written consents in lieu of an annual meeting) or any meeting at which selection of the independent auditors is approved must include:

- the name of the principal accountant selected or being recommended to shareholders for election, approval or ratification, or, if no accountant has been selected or recommended, the reasons why one has not been selected or recommended;
- the identity of the corporation's principal accountant for the previous fiscal year if it is different from the accountant selected or recommended for the current year;
- if the corporation's principal accountant at any time during the past two fiscal years is no longer acting in that capacity, or a new principal accountant has been hired, specified additional information relating to the facts and circumstances of the change in accountant; and
- whether a representative of the principal accountant will attend the annual meeting and, if so, whether the representative will have an opportunity to make a statement and be available to respond to appropriate questions. Note that in light of the accounting issues raised by the recent corporate scandals, shareholders may have more questions for the principal accountant than in past years.

The corporation is also required to disclose:

- the aggregate fees billed by the principal accountant under the captions noted below:

Caption	Description
Audit Fees	Aggregate fees billed in each of the last two fiscal years for professional services rendered in connection with the audit of the corporation's annual financial statements and for reviews of the financial statements included in its Quarterly Reports on Form 10-Q.
Audit-Related Fees	Aggregate fees billed in each of the last two fiscal years for assurance and related services by the principal accountant that are reasonably related to the performance of the audit or review of the corporation's financial statements that are not reported under the caption "Audit Fees" above, including a description of the nature of the services comprising the fees disclosed under this category.
Tax Fees	Aggregate fees billed in each of the last two fiscal years for professional services rendered by the principal accountant for tax compliance, tax advice and tax planning, including a description of the nature of the services comprising the fees disclosed under this category.
All Other Fees	Aggregate fees billed in each of the last two fiscal years for all other products and services provided by the principal accountant that are not otherwise disclosed above, including a description of the nature of the services comprising the fees disclosed under this category.

- the audit committee's pre-approval policies and procedures related to products and services provided by the principal accountant and the percentage of the products and services provided under the captions "Audit-Related Fees," "Tax Fees" and "All Other Fees" that were pre-approved by the audit committee; and
- if the percentage is greater than 50 percent, the percentage of hours expended on the principal accountant's audit of the corporation's financial statements for the most recent fiscal year that was attributed to work performed by persons other than the principal accountant's full-time, permanent employees.

Although there is no legal requirement that shareholders approve or ratify the selection of a corporation's independent accountant, it has become customary to submit the selection of the independent accountant to a shareholder vote at the corporation's annual meeting. However,

Sarbanes-Oxley now requires that the independent accountant be selected solely by the corporation's audit committee, which will likely cause most corporations to discontinue the practice.

N. PERFORMANCE GRAPH

The proxy rules require the inclusion of a graph comparing the corporation's "cumulative total shareholder return" for a minimum five-year period (or such shorter period of time as the corporation's securities have been registered under the Exchange Act) with the cumulative total return of a broad market index (such as Standard and Poor's 500 Stock Index) and the cumulative total return of an index of corporations similar to the corporation. The proxy rules define "cumulative total shareholder return" as the quotient of (1) the sum of the dividends per share paid for the period represented by the graph and the difference in share price at the beginning versus the end of the period by (2) the share price at the beginning of each such period. For purposes of making this calculation, the proxy rules instruct that all dividends should be assumed to have been reinvested in the corporation's common stock during the presentation period.

The rules and instructions governing the performance graph permit a corporation to present other performance measures in addition to cumulative total shareholder return, provided that the corporation's compensation committee report describes the relationship between the measure used and the level of executive compensation. The performance graph is required to be included only in proxy statements relating to meetings at which directors are to be elected. However, because directors are normally elected at annual meetings, performance graphs are found in nearly all proxy statements relating to the annual meeting of shareholders. *See* Item 8 of Schedule 14A and Item 402(l) of Regulation S-K.

O. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

If action is to be taken at an annual meeting with respect to the election of directors, the proxy rules require disclosure of a variety of information about transactions between the corporation and specified related parties. Item 7 of Schedule 14A cross references Item 404 of Regulation S-K, which requires a description of:

- any transaction or series of similar transactions, since the beginning of the corporation's last fiscal year, or any currently proposed transaction, or series of similar transactions, to which the corporation or any of its subsidiaries was or is to be a party, in which the amount involved exceeds $60,000 and in which any of the following persons had, or will have, a material interest:
  - any director or executive officer of the corporation;
  - any nominee for election as a director;
  - any shareholders known to the corporation to own more than five percent of any class of the corporation's voting securities; and
  - any member of the immediate family of any of the foregoing persons.

- any relationship between the corporation and business or professional entities with which directors and director nominees are or were associated during the corporation's last fiscal year if:
  - the director or director nominee is or has been during the last fiscal year an executive officer or owner of more than ten percent of the business or professional entity and:
    - the entity made during the corporation's last fiscal year, or proposes to make during the current fiscal year payments to the corporation, or the corporation made during its last fiscal year, or proposes to make during the current fiscal year, payments to the entity of amounts in excess of five percent of the corporation's or entity's total consolidated assets; or
    - the corporation or its subsidiaries was indebted to the entity at the end of its last fiscal year in an aggregate amount in excess of five percent of the corporation's total consolidated assets at the end of such fiscal year;
- the director or director nominee is or has been a member of, or of counsel to, a law firm that the corporation has retained during its last fiscal year or proposes to retain during its current fiscal year;
- the director or director nominee is or has been a partner or executive officer of any investment banking firm that has performed services for the corporation (other than as a participating underwriter in a syndicate) during the corporation's last fiscal year or that the corporation proposes to have perform services during its current fiscal year; or
- the director or director nominee or corporation has any other relationship with business or professional entities of which the corporation is aware that is substantially similar in nature and scope to those described above.
- any indebtedness of any of the following persons to the corporation or any if its subsidiaries at any time since the beginning of the corporation's last fiscal year in an amount in excess of $60,000:
  - any director or executive officer of the corporation;
  - any nominee for election as a director;
  - any member of the immediate family of any of the foregoing persons;
  - any corporation or organization (other than the corporation or its subsidiaries) of which any director, officer or director nominee is an executive officer, partner or beneficial owner of ten percent or more of any class of equity securities; and
  - any trust or other estate in which any director, officer or director nominee has a substantial beneficial interest or as to which such person serves as a trustee or in a similar capacity.

Each of these disclosure requirements contains a number of instructions to assist and direct the corporation in providing the necessary disclosure. Readers are encouraged to review the relevant provisions of Item 404 of Regulation S-K to determine the appropriate disclosures for their corporation.

P. EQUITY COMPENSATION PLAN SHAREHOLDER APPROVAL RULES

The NYSE and Nasdaq listing standards require shareholder approval of listed corporation's equity compensation plans. With a few limited exceptions, shareholder approval of all equity compensation plans, including stock option plans as well as all material amendments to such plans are required. The NYSE and Nasdaq prior exemptions for "broad-based" equity compensation plans and plans excluding officers and directors from a shareholder approval requirement have been eliminated by recent amendments to the NYSE and Nasdaq listing standards. The specific requirements of the new NYSE and Nasdaq equity compensation plan shareholder approval rules are summarized below.

1. The New York Stock Exchange Rules

Plans Covered. Under the NYSE listing standards, an "equity-compensation plan" that requires shareholder approval is "a plan or other arrangement that provides for the delivery of equity securities (either newly issued or treasury shares) of the listed company to any employee, director or other service provider as compensation for services." Any compensatory grant of options or other equity securities that is not made under such a plan is an equity compensation plan for these purposes.

The following are specifically exempted from the equity compensation plan definition even if the brokerage and other costs of the plan are paid for by the listed corporation:

- plans that pay all benefits in cash;
- plans adopted prior to June 30, 2003, subject to the NYSE's rules regarding material revisions to such plans;
- plans that are made available to shareholders generally, such as a typical dividend reinvestment plan;
- plans that merely allow employees, directors or other service providers to elect to buy shares on the open market or from the listed corporation for their current fair market value, regardless of whether:
  - the shares are delivered immediately or on a deferred basis; or
  - the payments for the shares are made directly or by giving up compensation that is otherwise due (for example, through payroll deductions);
- tax-qualified plans, such as 401(k) plans and employee stock option plans;
- employee stock purchase plans intended to meet the requirements of Section 423 of the Internal Revenue Code of 1986, as amended (the Code); and

- parallel excess plans, which are defined generally as a pension plan within the meaning of the Employee Retirement Income Security Act of 1974, as amended (ERISA), that is designed to work in parallel with a tax-qualified plan to provide benefits in excess of various Code limits.

The NYSE listing standards require that, in circumstances in which equity compensation plans and amendments do not require shareholder approval, the plans and amendments still must be considered and approved by the corporation's compensation committee or a majority of the corporation's independent directors.

Material Revisions and Amendments. Under the NYSE listing standards, any material revision of an equity compensation plan also requires shareholder approval. A "material revision" includes, but is not limited to:

- a material increase in the number of shares available under the plan (other than an increase solely to reflect a reorganization, stock split, merger, spinoff or similar transaction), provided that:
    - if a plan contains a formula for automatic increases in the shares available or for automatic grants pursuant to a formula, each such increase or grant will be considered a revision requiring shareholder approval unless the plan has a term of not more than ten years (a Formula Plan); and
    - if a plan contains no limit on the number of shares available and is not a Formula Plan, then each grant under the plan will require separate shareholder approval regardless of whether the plan has a term of not more than ten years (a Discretionary Plan);
- an expansion of the types of awards available under the plan;
- a material expansion of the class of employees, directors or other service providers eligible to participate in the plan;
- a material extension of the term of the plan;
- a material change to the method of determining the strike price of options under the plan (a change in the method of determining "fair market value" from the closing price on the date of grant to the average of the high and low prices on the date of grant is an example of a change that the NYSE would not view as material); and
- the deletion or limitation of any provision prohibiting repricing of options. See the next section for details.

It is important to note that an amendment to an equity compensation plan will not be considered a "material revision" requiring shareholder approval if it curtails rather than expands the scope of the plan in question.

Option Repricings. Under the NYSE rules, a plan that does not specifically permit option repricing will be considered to prohibit repricing. Accordingly, any actual repricing of options

will be considered a material revision of a plan even if the plan itself is not revised. However, this consideration does not apply to a repricing effected pursuant to an exchange offer that commenced before June 30, 2003. The NYSE rules define "repricing" broadly to include any of the following or any other action that has the same effect:

- lowering the strike price of an option after it is granted;
- any other action that is treated as a repricing under generally accepted accounting principles; and
- canceling an option at a time when its strike price exceeds the fair market value of the underlying stock in exchange for another option, restricted stock or other equity, unless the cancellation and exchange occurs in connection with a merger, acquisition, spin-off or other similar corporate transaction.

Inducement Awards and Awards Assumed in Mergers and Acquisitions. The NYSE rules exempt "employment inducement grants" and certain grants with respect to options and plans that are assumed in mergers and acquisitions, but require corporations relying on one or more of these exemptions to make a press release and/or written notification to the SEC, depending on the exemption. Such inducement awards are also available for rehires following a bona fide period of non-employment.

Broker Voting. Recent amendments to the NYSE rules prohibit member organizations of the NYSE (brokers) from giving a proxy to vote on equity compensation plans unless the beneficial owner of the shares covered by the proxy has given voting instructions. This prohibition will have as significant an impact on the approval of equity compensation plans as any of the other changes to the shareholder approval requirements. In the past, corporations could expect to receive the vote of member organizations if the proposed plan or amendment did not cover more than five percent of the corporation's outstanding shares. Without the expected broker votes, corporations will be required to solicit shareholder approval of equity compensation plans much more aggressively. In addition, significant shareholders will be able to exert more influence in the equity compensation plan shareholder approval process.

Transitional Rules. Generally, a plan that was adopted before June 30, 2003 will not be subject to shareholder approval under the recent amendments to the NYSE rules unless and until it is materially revised.

In the case of (1) a Discretionary Plan, whether or not previously approved by shareholders, and (2) a Formula Plan that either has not been previously approved by shareholders or does not have a term of ten years or less, additional grants may be made after June 30, 2003 without further shareholder approval only until the first to occur of (a) the corporation's next annual meeting at which directors are elected that occurs after December 27, 2003; (b) June 30, 2004; and (c) the expiration of the plan.

Following the expiration of this transition period, a Discretionary Plan may continue to be used only consistent with past practice. A shareholder-approved Formula Plan may continue to

be used after the end of this transition period only if it is amended to provide for a term of ten years or less from its original adoption or, if later, the date of its most recent shareholder approval. Such an amendment would not itself be considered a material revision requiring shareholder approval. In addition, a Formula Plan may continue to be used, without shareholder approval, if all grants after June 30, 2003 are made only from the shares available immediately before June 30, 2003, in other words, based on formulaic increases that occurred prior to June 30, 2003.

Notification Requirement. The recent amendments also require NYSE-listed corporations to notify the NYSE in writing when they rely on one or more of the shareholder approval exemptions described above, including the inducement grant exemption, the merger and acquisition exemption and the exemptions for certain types of plans.

2. The Nasdaq Stock Market Rules

Plans Covered. Like the NYSE rules, the Nasdaq rules govern a wide range of equity compensation arrangements. Specifically, the rules require shareholder approval of all "stock option plans and other equity compensation arrangements." As with the NYSE, Nasdaq also excludes certain plans from the shareholder approval requirements, including:

- plans adopted before June 30, 2003, subject to Nasdaq's rules regarding material revisions (described below);
- plans that are made available to shareholders generally, such as a typical dividend reinvestment plan;
- arrangements that merely provide a convenient way for employees, directors or other service providers to purchase stock at fair market value;
- tax-qualified plans, such as 401(k) plans and employee stock option plans;
- parallel nonqualified plans, which are defined generally as a pension plan within the meaning of ERISA that is designed to work in parallel with a tax-qualified plan to provide benefits in excess of various Code limits; and
- plans or arrangements relating to an acquisition or merger.

The Nasdaq rules limit the term of any Formula Plans to ten years unless shareholder approval of the plan is obtained every ten years. Under the new rules, plans that do not limit the number of shares available for grant require shareholder approval of each grant under the plan.

Material Revisions and Amendments. Like the NYSE rules, the Nasdaq rules also require shareholder approval of material amendments to stock option plans or other equity compensation arrangements and provide a non-exclusive list of potential amendments requiring shareholder approval, including:

- a material increase in the number of shares available under the plan (other than an increase as a result of a stock split, merger, spinoff or similar transaction);

- a material increase in benefits to participants, including any material change to:
  - permit a repricing;
  - reduce the price at which shares or options may be offered; or
  - extend the duration of the plan;
- a material expansion of the class of participants eligible to participate in the plan; and
- an expansion in the types of options or awards provided under the plan.

Option Repricings. Under the Nasdaq rules, amending a plan to permit option repricings constitutes a material revision and requires shareholder approval. The Nasdaq rules do not otherwise expressly prohibit option repricings. Instead, the final rules "recommend" that plans meant to permit repricing should explicitly and clearly state that repricing is permitted. The Nasdaq rules do not specifically address the treatment of repricings under a plan that does not explicitly permit repricings. Although the rules seem to technically permit a Nasdaq-listed corporation with a plan that is silent about repricings to undertake option repricings without obtaining shareholder approval, Nasdaq's recommendation that any plan intending to allow repricings include clear language to that effect and statements by the SEC related to the Nasdaq rules will in practice likely result in an outcome similar to that under the NYSE rules (i.e., no repricings unless specifically permitted in the plan). However, the application of the Nasdaq rules with respect to this issue is not certain at this point; further guidance may be required from Nasdaq.

Inducement Awards and Awards Assumed in Mergers and Acquisitions. The Nasdaq rules exempt "employment inducement grants" and certain grants with respect to options and plans that are assumed in mergers and acquisitions. Unlike the NYSE rules, the Nasdaq rules require inducement grants to be approved by the corporation's compensation committee or by a majority of the corporation's independent directors. Under the Nasdaq rules, inducement awards are available for rehires following a bona fide period of non-employment. Awards assumed in connection with a merger or acquisition do not require shareholder approval only if:

- shareholder approval is not required to convert, replace or adjust outstanding options or other awards to reflect the transaction; and
- shares available under certain plans acquired in mergers and acquisitions may be used for certain post-transaction grants without further shareholder approval.

Q. SHAREHOLDER NOMINATIONS FOR DIRECTOR AT ANNUAL MEETINGS

In October 2003, the SEC proposed a new Rule 14a-11 under the Exchange Act. If triggered, new Rule 14a-11 would require public corporations to include some shareholder nominees for director in their annual meeting proxy statements and proxy cards. Even though new Rule 14a-11 is not yet effective, the SEC has announced that the shareholder access required by the rule will become operative upon the occurrence of a triggering event occurring after January 1, 2004, regardless of when the final rule is adopted.

1. Triggering events

Unless applicable state law prohibits shareholders from nominating candidates to serve on a corporation's board of directors, new Rule 14a-11 would require public corporations to include shareholder nominations in their annual meeting proxy statements if either of the following events occurs at an annual meeting of shareholders following January 1, 2004:

- at least one of the corporation's nominees for director receives "withhold" votes from more than 35 percent of the votes cast at the meeting; or
- a shareholder or group of shareholders that has held more than one percent of the corporation's voting stock for at least one year submits a proposal pursuant to Rule 14a-8 to activate the new shareholder nomination process and the proposal receives a majority of the votes cast.

As part of the proposing release, the SEC requested comment on whether to add a third triggering event, which would occur if:

- a shareholder proposal (other than a director nomination under proposed Rule 14a-11) is submitted by a shareholder or group of shareholders that has held more than one percent of the corporation's voting stock for at least one year;
- such shareholder proposal receives the favorable vote of at least a majority of the votes cast at the shareholders meeting; and
- the board of directors of the corporation fails to implement the proposal by 120 days prior to the anniversary of the date that the corporation mailed its proxy materials for the prior year's annual meeting.

Once triggered, the proposed shareholder nomination process would remain effective for each annual meeting through the meeting held during the second calendar year following the triggering event.

Notice requirements under proposed Rule 14a-11 would require corporations to disclose in their proxy statements any shareholder proposal that may result in a triggering event. The proposal would also require corporations to disclose in their periodic reports the results of any vote that triggers the proposed shareholder nomination process.

2. Nominating shareholder eligibility and proxy disclosure requirements regarding the shareholder nominee

If the shareholder nomination process is triggered, the proposed rule would permit any shareholder beneficially owning more than five percent of the corporation's voting common stock for at least two years as of the date of the nomination (or group of shareholders beneficially owning, in the aggregate, more than five percent of the voting common stock, with the securities used to calculate that ownership held for at least two years as of the date of the nomination) to designate a nominee for director so long as the shareholder or group intends to hold its shares until

the next annual meeting. In such an event, proposed Rule 14a-11 would require the corporation to include the shareholder nominee in its annual meeting proxy materials if:

- Rule 13d-1(b) or (c) promulgated under the Exchange Act allows the nominating shareholder or group to report beneficial ownership on Exchange Act Schedule 13G;
- prior to or concurrently with designating the nominee, the nominating shareholder or group filed a Schedule 13G or an amendment to a previously filed Schedule 13G in which the shareholder or group (1) reported beneficial ownership as a passive or institutional investor and (2) certified that it has been a five percent shareholder for at least two years; and
- the nominee's candidacy or election would not violate state or federal law or the rules of any applicable national securities exchange or association.

If the nominating shareholder or group complies with these requirements, proposed Rule 14a-11 would require the corporation to include the shareholder nominee's name and certain other information about the shareholder nominee in its proxy statement, including:

- the name of the director nominee as well as certain information required for all director nominees (*See* Items 7(a), (b) and (c) of Schedule 14A);
- the nominee's statement consenting to nomination and, if elected, board membership;
- specified information about the nominating shareholder or group that is not otherwise provided in the nominating shareholder's Schedule 13G; and
- any methods, including websites that publish soliciting materials, by which the nominating shareholder or group intends to solicit in favor of the nominee.

In addition, if the corporation included a statement supporting its director nominees or opposing the shareholder nominees, the proposal would permit the nominating shareholder to require the corporation to include a statement of up to 500 words in support of the shareholder nominee. The nominating shareholder would also be required to file the supporting statement with the SEC as soliciting material, and the statement would be subject to the Rule 14a-9 prohibition against false and misleading statements. The nominating shareholder itself, and not the corporation, would be liable for any such false or misleading statements.

3. Procedural requirements applicable to nominating shareholders

Proposed Rule 14a-11 would require a nominating shareholder to notify the corporation on or before the date 80 days before the anniversary of the date on which the corporation mailed proxy materials for the prior year's annual meeting that it intends to submit a shareholder nominee for inclusion in the corporation's proxy materials. Proposed Rule 14a-11 would also require the nominating shareholder to file the notice with the SEC within two days of notifying the corporation, which would include the nominating shareholder's statement that:

- to its knowledge, the nominee's candidacy or election does not violate state or federal law or any applicable rules of a national securities exchange or association;

- it satisfies all of the nominating shareholder eligibility requirements of Rule 14a-11;
- it does not have certain specified relationships with the nominee;
- the nominee meets the independence requirements under the applicable listing standards; and
- neither it nor the nominee has an agreement with the corporation regarding the nomination.

In addition, the proposal would require the notice to contain the additional information and disclosures about the nominating shareholder that would be required in the corporation's proxy materials. Because the proposal considers the notice soliciting material, all of the representations in the notice would be subject to the Rule 14a-9 prohibition against false and misleading statements.

4. Maximum number of shareholder nominees

The maximum number of shareholder nominees that the proposal would require a corporation to include in its proxy materials is:

- one nominee for boards with no more than eight directors;
- two nominees for boards with more than eight but no more than 19 directors; and
- three nominees for boards with more than 19 directors.

Adjustments to the maximum number of shareholder nominees would be made in the event that a corporation has a "staggered" board of directors. In the case of excessive nominations, the proposal would require the corporation to include only the nominations of shareholders with the largest two-year beneficial ownership of the corporation's voting securities.

5. Exemptions from the proxy rules

Under proposed Rule 14a-11, shareholders would be free to form nominating groups to meet the five percent beneficial ownership requirement without becoming subject to the existing proxy rules if either:

- no more than 30 shareholders were solicited in connection with the formation of the nominating group; or
- no written solicitation stated any more than merely the intent to form a nominating group, the group's percentage of beneficial ownership and contact information for the solicitor.

The proposal would provide a similar exemption from the proxy rules in the case of solicitations supporting a Rule 14a-11 nominee if:

- the solicitor did not seek power to act as proxy or request a form of revocation, abstention, consent or authorization;

- each written communication identified the nominating shareholder and described its ownership and other interests; and
- each written communication included a legend containing specified information about the availability and content of the corporation's proxy statement.

R. PRESENTATION OF INFORMATION

The proxy rules also contain specific rules regarding the manner in which information is to be presented in the proxy statement. Among other things, Rule 14a-5 of Regulation 14A requires that:

- information in the proxy statement be clearly presented and organized according to subject matter with appropriate headings for the various categories of information;
- information in the proxy statement be presented in Roman type at least as large and as legible as ten-point modern type (such as this, AaBbCc123), except that financial statements and tables (but not the notes thereto) may be in eight-point modern type (such as this, AaBbCc123) if necessary for convenient presentation;
- the proxy statement must include the deadline for any proposals shareholders intend to present at the corporation's next annual meeting; and
- the proxy statement must include the date after which notice of a shareholder proposal that is not submitted in accordance with the provisions of Rule 14a-8 of Regulation 14A will be considered untimely.

S. OTHER REQUIREMENTS RELATED TO PROXY SOLICITATION MATERIALS

In addition to the requirements described in this handbook, the proxy rules contain numerous additional items and instructions relating to information required to be presented in materials used to solicit proxies, depending on the type of meeting and the matters to be considered at the meeting. These additional items relate to, among other things, the prohibition against false or misleading statements in proxy materials and the inclusion of information specific to the types of matters to be considered at the annual meeting, such as equity plans and combination transactions.

T. PLAIN ENGLISH

Although the proxy statement is prepared to meet legal requirements, it also is a valuable shareholder communications tool. One way to make the proxy statement useful as a shareholder communications tool is to prepare a document that is well-organized, more visually appealing and more readable. Although the SEC's plain English rules do not currently govern proxy statements, more and more corporations are using the plain English rules as a guide to prepare proxy statements that are more easily understood by their shareholders. Preparing the proxy statement in accordance with the plain English rules benefits the shareholders and the corporation—shareholders are able to better understand the matters discussed and to make an informed decision and the corporation is presented in a more positive light with disclosure that is

more easily read and understood. There are many resources available for assistance in preparing the proxy statement and other documents in accordance with the plain English rules. Corporations should consult with legal counsel or their R.R. Donnelley representative for more guidance on these matters.

III. FORM OF PROXY

The proxy card on which shareholders actually mark their votes is largely dictated by the computer forms that most public corporations now use to enable the proxies to be tallied electronically. The proxy card should be prepared in close cooperation with the company that will be tabulating the results for the meeting to ensure that it will work correctly with its technology. The corporation should also discuss the form of proxy with its inspector of election.

The form of proxy must comply with a number of requirements contained in Rule 14a-4 of Regulation 14A, which require the form of proxy to:

- identify in boldface type the person or entity on whose behalf the proxy is being solicited;
- contain a blank space for shareholders to date the proxy;
- identify clearly and impartially each matter to be acted upon regardless of whether it is conditioned upon approval of another matter or whether it was proposed by the corporation or a shareholder; and
- provide means by which the shareholder may approve, disapprove or abstain with respect to each separate matter (other than the election of directors) by marking the appropriate box.

Where the proxy relates to the election of directors, the proxy card must set forth the name of each person nominated for election as a director. The proxy card may allow shareholders the opportunity to grant authority to vote for all nominees as a group only if similar means are provided to allow shareholders to withhold authority to vote for all nominees as a group. Conversely, the proxy card must include one of the following means for shareholders to withhold authority to vote for each nominee:

- a box opposite the name of each director nominee that may be marked to indicate a vote to withhold authority for that nominee;
- an instruction in bold face type indicating that a shareholder may withhold authority to vote for a specific nominee by lining through or otherwise striking out the name of the nominee;
- designated blank spaces in which the shareholder may write the names of the nominees with respect to whom authority to vote is withheld; or
- any other similar means if appropriate instructions are provided indicating how a shareholder may withhold authority for any director nominee.

The form of proxy may grant discretionary authority with respect to matters as to which a choice is not specified by the shareholder if certain conditions are met, as more fully described in the proxy rules. In addition, the proxy rules allow persons soliciting support of a minority slate of nominees to also seek authority to vote for one or more of the nominees named in the corporation's proxy statement if additional specified conditions are satisfied. The specific rules relating to granting or seeking authority to vote by proxy depend upon the type of matter upon which authority is being granted or sought. Readers should review the proxy rules regarding granting discretionary authority found in Rule 14a-4 of Regulation 14A before including any statement in a form of proxy purporting to grant such authority.

As discussed previously, no form of proxy or consent may be delivered to or requested from any person before such person has received a definitive proxy statement filed with the SEC. In filing the form of proxy with the definitive proxy statement in accordance with the requirements of the proxy rules, the form of proxy should be filed as an appendix at the end of the proxy statement.

IV. DUE DILIGENCE REGARDING PROXY MATERIALS

The proxy rules contain anti-fraud regulations similar to those contained elsewhere in the federal securities laws. Specifically, the proxy rules prohibit the use of proxy solicitations that:

- contain any statement that, at the time and in light of the circumstances in which it is made, is false or misleading with respect to any material fact;
- omit to state any material fact necessary to make the statements in the proxy materials not false or misleading; or
- omit to state any material fact necessary to correct any statement in any earlier communication related to the solicitation of a proxy for the same meeting or subject matter that has become false or misleading.

To ensure compliance, persons responsible for preparation of the corporation's proxy materials must ensure that directors and officers of the corporation are provided ample time prior to their filing or mailing to review and verify the information contained in the solicitation materials and annual report to shareholders.

Most corporations also circulate a formal questionnaire for all directors and officers in order to obtain or confirm the personal information that must be included in the proxy statement. Preparation of the "D&O Questionnaire," as they are called, involves a review of disclosure requirements, government regulations and officer and director biographies. As these forms can be difficult to prepare, persons responsible for preparing the D&O Questionnaire should consult with legal counsel to ensure compliance with the legal and technical disclosure requirements. Once the questionnaires have been completed and returned by the directors and officers, the information included must be reviewed and summarized for inclusion in the proxy statement and other year-end documents.

V. DISTRIBUTION OF PROXY MATERIALS TO SHAREHOLDERS

The proxy rules prohibit the solicitation of proxies prior to the delivery to each solicited shareholder of a proxy statement that complies with the disclosure requirements of the proxy rules. The proxy rules also require that an annual report to shareholders accompany or precede the proxy statement if directors are to be elected at the meeting. *See* Rule 14a-3 of Regulation 14A. Historically, corporations have mailed paper copies of proxy statements, annual reports and additional solicitation materials to shareholders. With recent technological advances, more and more corporations have begun distributing their proxy materials electronically. The stock exchanges also have rules regarding the date by which proxy materials must be delivered to shareholders.

As discussed above, Rule 14a-13 of Regulation 14A establishes the rules by which the corporation works with broker-dealers, banks, voting trustees and other record holders to ensure that the proxy materials are provided to the beneficial holders of the corporation's voting securities. Corporations are required to survey, by first class mail, these organizations at least 20 business days prior to the record date for the annual meeting to determine the number of copies these organizations will require for distribution to beneficial holders. Following receipt of this information, the corporation is required to supply each organization with copies of the proxy statement and other proxy solicitation materials and annual reports in the number and assembled in the manner as requested by the record holder to ensure delivery to the beneficial holders of the corporation's voting securities. The corporation is also required, upon the request of the record holder, to pay its reasonable expenses for completing the mailing of the proxy materials to the beneficial holders.

A. ELECTRONIC DELIVERY

Many corporations have begun taking advantage of advances in electronic communications to deliver their proxy statements and annual reports to their shareholders electronically. The SEC has determined that electronic delivery of proxy solicitation materials will satisfy the delivery requirements of the federal securities laws if it results in the delivery of information substantially equivalent to the information delivered in paper form.

To ensure that the delivery requirements of the proxy rules are satisfied, any corporation electing to provide proxy materials electronically must:

- Ensure that the information delivered electronically can be easily accessed and retained by the recipient without undue difficulty. The document must also be available to the shareholder for as long as delivery is required. In addition, the access that is afforded to shareholders through electronic delivery must be comparable to the access afforded by the mail in the case of paper documents.
- Receive the shareholder's informed consent to receiving the proxy materials through a particular electronic medium prior to electronic delivery of the materials. Corporations should take care to ensure that the consents relied upon for electronic delivery remain valid as the proxy rules allow shareholders to revoke their consent.

- If the corporation elects to deliver the materials via its corporate website, notify each shareholder by mail or e-mail that the proxy materials are available at the website and provide clear instructions for accessing the information.
- Obtain evidence that each shareholder actually received the information. This requirement may be satisfied by e-mail return receipt or confirmation of accessing, downloading or printing.

B. HOUSEHOLDING

The SEC permits the delivery of a single proxy statement or annual report to all shareholders of record having the same address if:

- the proxy statement or annual report is addressed to all shareholders at the same address as a group;
- the corporation receives either affirmative consent or implied consent in accordance with the requirements of the proxy rules to household delivery;
- each shareholder at the shared address receives a separate proxy card; and
- the corporation includes an undertaking in the proxy statement to deliver upon request a separate copy of the annual report or proxy statement, as applicable.

As discussed previously, the requirements relating to delivery of the notice of annual meeting are governed by state corporate law. Any corporation considering the delivery of proxy statements under the householding rules should confirm that household delivery will comply with the corporate law of its jurisdiction of incorporation. Section 233 of the DGCL allows corporations to make use of the "householding" rules promulgated under the Exchange Act. Under Section 233, a notice given by a Delaware corporation under the DGCL or the corporation's charter or bylaws is effective if given by a single written notice to shareholders sharing the same address so long as the shareholders consent. Section 233 further provides that any shareholder who fails to object in writing to the corporation within 60 days after receiving written notice from the corporation of its intention to send a single notice to shareholders sharing the same address is deemed to have consented to receiving such single written notice.

VI. FILING PROXY MATERIALS

A. SECURITIES AND EXCHANGE COMMISSION

All proxy materials filed with the SEC, whether preliminary or definitive, must include a cover page in the form set forth in Schedule 14A identifying the filing party, the nature of the filing (e.g., preliminary proxy statement, definitive proxy material), and providing instructions relating to the payment of the filing fee in cases where a fee is required. *See* Rule 14a-6 of Regulation 14A.

The SEC's Electronic Data Gathering, Analysis and Retrieval (EDGAR) system is a helpful resource in obtaining examples of disclosure used by other corporations for similar matters. If the matter requires SEC review, using these examples may facilitate prompt SEC clearance.

1. Preliminary proxy materials

Rule 14a-6(a) of Regulation 14A requires preliminary proxy soliciting materials to be filed with the SEC at least ten days prior to the date they are first sent or given to shareholders. The rule states that a shorter period may be authorized upon a showing of good cause.

There is no filing requirement for preliminary proxy materials that relate to an annual meeting at which only the following "routine" matters will be considered:

- the election of directors;
- the approval or ratification of independent auditors;
- shareholder proposals submitted in accordance with Rule 14a-8 of Regulation 14A (the proxy rule governing the submission of proposals by shareholders); and
- the approval or ratification of benefit plans, or any amendment thereto, that falls within restrictions imposed by the federal securities laws.

Each preliminary proxy filing must include the preliminary proxy statement, the preliminary form of proxy and any other soliciting material. In addition, the preliminary proxy materials must be filed electronically and clearly marked "Preliminary Copies" and accompanied by a statement of the date on which definitive copies of such preliminary materials are intended to be provided to security holders. There are no filing fees for proxy statements unless the proxy materials relate to an acquisition, merger or similar transaction.

Under the proxy rules, the SEC has ten days following the filing to advise the corporation if it intends to commence a complete review of the proxy materials. If the corporation is not notified by the SEC within ten days of filing that a review is being undertaken, the corporation is free to distribute the proxy materials to its shareholders without further consultation with the SEC. Nevertheless, because the SEC does not provide notice if no review is to be undertaken, it is advisable to contact the SEC to confirm that the SEC will not review the filing or that the review is complete before materials are sent to shareholders.

2. SEC review

If the SEC elects to undertake a complete review of the preliminary proxy materials, the review period may take up to 30 days or more. The SEC's review of preliminary proxy materials focuses on the corporation's compliance with the proxy rules and the regulations contemplated thereby. The SEC's authority does not extend to any consideration of the fairness or the merits of a proposal. If a corporation anticipates that a preliminary proxy filing will be required, the timetable for holding the annual meeting should allow for the 30 or more day review period as

well as additional time to respond to the SEC's comments. In addition, the preliminary materials should be filed as early as possible to allow sufficient time to revise the proxy statement in response to comments from the SEC and still be able to mail the materials to shareholders within the timetable established to hold the annual meeting.

3. Revised proxy materials

Upon review, the SEC may require substantive changes to be made to the preliminary proxy materials. In such event, revised materials must be submitted to the SEC prior to distributing definitive copies of the proxy materials to shareholders. The filing of revised proxy materials does not recommence the ten-day time period unless the revised materials contain material revisions or material new proposals that constitute a fundamental change in the proxy materials. If the revisions to the proxy materials are material or material new proposals are included, the final proxy materials must be reviewed and cleared by the SEC before they are delivered to shareholders. Rule 14a-6(h) of Regulation 14A requires that any revised or amended proxy material filed with the SEC be marked, by underscoring or some other appropriate manner, to indicate clearly and precisely the changes effected therein.

4. Definitive proxy materials

Definitive proxy materials relating to an annual meeting at which only routine matters are to be considered must be filed with the SEC no later than the date the materials are first sent or given to shareholders. *See* Rule 14a-6(b) of Regulation 14A. Like the preliminary filing requirements, the corporation must file the proxy statement, proxy card and all other soliciting material, in the form in which such material is furnished to shareholders, on the date they are first mailed to shareholders. Like preliminary materials, definitive proxy materials must be filed electronically. The proxy rules require that corporations file three copies of the definitive proxy materials with each national securities exchange on which the corporation has a class of securities listed or registered. Definitive proxy materials must also be accompanied by a statement of the date on which copies of such materials were provided to security holders, or, if not yet provided, the date on which copies thereof are intended to be released. AMEX and Nasdaq allow proxy materials filed with the SEC electronically to satisfy the corporation's filing requirements with these organizations. The NYSE's electronic filing provisions do not include proxy materials and require listed corporations to file hard copies of all proxy materials directly with the NYSE.

5. EDGAR

Since 1993, the SEC has required public corporations to submit at least some of the documents they file with the SEC electronically via the EDGAR system, and by 1999, all domestic corporations were subject to electronic filing requirements. With a few limited exceptions, generally relating to confidential proxy materials for business combinations and the corporation's annual report to shareholders, all proxy materials must be submitted to the SEC electronically through EDGAR.

Regulation S-T under the federal securities laws, the rule specifically requiring electronic filing, contains numerous rules and regulations governing electronic filings through EDGAR, including the requirement that first-time filers obtain EDGAR access codes and corporate account numbers, requirements related to signatures filed electronically and the format of documents filed electronically, among others. Filers should contact their RR Donnelley representative for further information relating to these rules and preparing documents for electronic filing.

B. STOCK EXCHANGES

Each of the NYSE, AMEX and Nasdaq also requires the filing of proxy solicitation materials. The NYSE requires listed corporations to file six definitive copies of all proxy materials with the NYSE not later than the date on which such materials are sent to shareholders. In addition, the NYSE requires listed corporations to file preliminary materials with the NYSE if any action is to be taken at an annual meeting relating to matters that may affect substantially the rights or privileges of listed securities of the corporation, or will result in the creation of new issues or classes of securities that the corporation may desire to list on the NYSE. In such an event, the NYSE staff will review preliminary materials and submit such comments as it may have before such materials become final. The NYSE's review is intended to be helpful in avoiding actions or situations that conflict with requirements or policies of the NYSE. AMEX requires listed corporations to file with AMEX five copies of the proxy statement, form of proxy and other soliciting materials that are mailed to shareholders. Nasdaq requires listed corporations to file with Nasdaq copies of all proxy solicitation materials and three copies of all reports and other documents the corporation files with the SEC. As discussed above, AMEX and Nasdaq allow proxy materials filed via EDGAR to satisfy these organizations' filing requirements, but the NYSE requires listed corporations to file hard copies of proxy materials.

THE ANNUAL REPORT TO SHAREHOLDERS

I. PREPARATION

If the corporation's proxy statement relates to an annual meeting at which directors are to be elected, the proxy rules require that it be accompanied or preceded by an annual report to shareholders that complies with the requirements of Rule 14a-3 of Regulation 14A. The annual report is a different document than the proxy statement and the Annual Report on Form 10-K that public corporations must file with the SEC, and is subject to much less regulation and supervision by the SEC.

Although the SEC does not dictate the contents of the annual report to shareholders to the extent of the proxy statement, the annual report to shareholders must include the following items required by Rule 14a-3 of Regulation 14A:

- consolidated, audited balance sheets as of the end of each of the two most recent fiscal years and audited statements of income and cash flows for the three most recent fiscal years for the corporation and its subsidiaries, that are:
  - prepared in accordance with the rules and regulations promulgated by the SEC in Regulation S-X; and
  - presented in Roman type at least as large and as legible as ten-point modern type, except that financial statements (but not the notes thereto) may be in eight-point modern type if necessary for convenient presentation;
- additional information required by Items 301–305 of Regulation S-K, including selected financial data for the preceding five-year period (Item 301), supplementary quarterly and other financial information (Item 302), management's discussion and analysis of the financial condition and results of operations of the corporation (Item 303), information concerning changes in or disagreements with the corporation's independent auditors on accounting and financial disclosures (Item 304) and quantitative and qualitative disclosures about market risk (Item 305);
- a brief description of the business conducted by the corporation and its subsidiaries during the preceding fiscal year;
- information relating to the corporation's industry segments, products and services, operations and export sales required by Item 101 of Regulation S-K;
- information identifying each of the corporation's executive officers and directors and indicating each person's principal occupation or employment;

- information required by Item 201 of Regulation S-K relating to the market price, trading market and security holders of the corporation's equity securities and dividends paid by the corporation; and
- unless included in the corporation's proxy statement, an undertaking in boldface type that a copy of the corporation's Annual Report on Form 10-K will be provided free of charge to any person solicited who requests the report in writing, except that the corporation is not required to provide copies of all exhibits to the Annual Report on Form 10-K free of charge.

II. INTEGRATION OF ANNUAL REPORT TO SHAREHOLDERS AND OTHER SECURITIES LAW FORMS

Some corporations have chosen to include their Annual Report on Form 10-K as part of their annual report to shareholders or to deliver to shareholders their Annual Report on Form 10-K in satisfaction of the proxy rules' annual report delivery requirements. All information required to be included in the annual report to shareholders is also required to be included in the Annual Report on Form 10-K. Other corporations elect to incorporate by reference into their Annual Report on Form 10-K some of the information presented in the annual report to shareholders. Corporations that elect to bind their Annual Report on Form 10-K into the annual report to shareholders will sometimes also include a "wrap-around" forepart containing the president's or chairperson's letter and glossy photographs of the corporation's management or operations. Corporations considering integrating their annual report and Annual Report on Form 10-K should be aware of the implications of Rule 14a-3(d), which states that information in such an integrated document in response to items required by Form 10-K is subject to liability under Section 18 of the Exchange Act, including information from the annual report that otherwise would not be subject to such liability.

III. FILING REQUIREMENTS

A. SECURITIES AND EXCHANGE COMMISSION

Seven copies of the annual report to shareholders must be provided to the SEC, solely for informational purposes, not later than the date the proxy statement is first mailed to shareholders or the date the preliminary proxy materials (or definitive proxy materials in the absence of a preliminary filing) are first filed with the SEC, whichever is later. Unless the annual report to shareholders is incorporated by reference into other documents filed with the SEC by the corporation, it may, but is not required to be, filed using EDGAR. *See* Rule 14a-3 of Regulation 14A.

B. STOCK EXCHANGES

Corporations are also required to file the annual report to shareholders with their stock exchange or Nasdaq. The NYSE requires two copies of the annual report to be provided to the

NYSE at the time it is sent to shareholders along with a statement as to the mailing date of the annual report (Rule 203.01). Nasdaq requires that the annual report be filed with Nasdaq at the time it is distributed to shareholders (Rule 4350(b)(1)) (if the corporation has elected to send to its shareholders the Annual Report on Form 10-K in satisfaction of the annual report requirement, then Nasdaq will consider the filing of the Annual Report on Form 10-K with the SEC as filing the annual report with Nasdaq). AMEX requires three copies of the report be filed with AMEX at the time it is distributed to shareholders (Rule 701).

IV. DELIVERY TO SHAREHOLDERS

As stated above, an annual report to shareholders must be delivered to each shareholder either before or with any proxy statement related to an annual meeting at which directors will be elected. Many corporations send the proxy statement, proxy card and annual report to shareholders together in one package. If the documents are sent in separate mailings, they must be sent in a manner reasonably designed to ensure that the annual report reaches the shareholder first. To save on mailing costs, some corporations mail the proxy statement by third class or bulk mail and the annual report by first class mail to ensure that it arrives first. The corporation will be under the same obligations to survey the broker-dealers, banks, voting trustees or other clearing agencies prior to the mailing as they are with the proxy statement. *See* "Federal Proxy Rules and the Proxy Statement—Distribution of Proxy Materials to Shareholders."

Like proxy statements, the corporation may deliver a single copy of the annual report to all shareholders of record having the same address if specified conditions are met. See the discussion relating to householding delivery of proxy materials above for a description of the conditions that must be satisfied to take advantage of these provisions for delivery of the corporation's annual report to shareholders. The proxy rules also allow for electronic delivery of the annual report to shareholders.

In addition, the listing requirements of each of the NYSE, AMEX and Nasdaq contain a requirement that corporations with listed securities prepare and deliver to shareholders an annual report containing audited financial statements of the corporation and its subsidiaries. The NYSE and AMEX require that the annual report be delivered to shareholders at least 15 days (in the case of the NYSE) or ten days (in the case of AMEX) before the annual meeting of shareholders, and in each case no later than four months following the end of the corporation's last completed fiscal year. Nasdaq requires the annual report to be delivered to shareholders a reasonable period of time prior to the corporation's annual meeting.

SHAREHOLDER PROPOSALS

Rule 14a-8 of Regulation 14A, the shareholder proposal rule, permits shareholders to submit matters for inclusion in the corporation's proxy statement and consideration at the corporation's annual meeting. Rule 14a-8 is presented in a plain-English style and question-and-answer format to make the requirements relating to shareholder proposals more easily understood by shareholders. Even with a more readable shareholder proposal rule, however, only a small proportion of public corporations actually receive shareholder proposals for consideration at their annual meeting. The SEC is reviewing the proxy rules and regulations relating to shareholder proposals, particularly the rules discussed below providing the corporation with substantive grounds to exclude shareholder proposals from its proxy materials. Many practitioners believe that changes made by the SEC to the shareholder proposal rules will likely limit the corporation's ability to exclude proposals, and thereby increase the number of shareholder proposals that are included in proxy materials. In June 2005, the SEC released Bulletin No. 14C, which discussed a variety of issues related to Rule 14a-8. *See* "Developments in the Law for the 2006 Proxy Season—Shareholder Proposals." Readers should consult with legal counsel before responding to a proposal submitted by a shareholder under Rule 14a-8.

I. PROCEDURAL REQUIREMENTS

To properly submit a shareholder proposal, the proxy rules require the shareholder submitting the proposal to satisfy specified conditions, including:

- holding a minimum of $2,000 in market value, or one percent, of the corporation's securities entitled to vote on the proposal for at least one year prior to the date the proposal is submitted and through the date of the annual meeting (if the shareholder fails to hold the required number of securities through the annual meeting date, the corporation may exclude any proposal submitted by the shareholder for meetings held in the following two years) (Rule 14a-8(b));
- providing information regarding the shareholder submitting the proposal for inclusion in the proxy statement (Rule 14a-8(l));
- submitting no more than one proposal to the corporation for a particular annual meeting of shareholders (Rule 14a-8(c));
- submitting a proposal and accompanying supporting statement not exceeding 500 words (Rule 14a-8(d));

- attending the annual meeting, or arranging for a qualified representative to attend the annual meeting on the shareholder's behalf, to present the proposal (if the shareholder, or its qualified representative, fails to attend the annual meeting and present the proposal without good cause, the corporation may exclude any proposal submitted by the shareholder for meetings held in the following two years) (Rule 14a-8(h)); and
- submitting the proposal prior to the deadline required by the proxy rules, which is 120 days before the one-year anniversary of the date the corporation's proxy statement for the previous year's annual meeting was first mailed to shareholders (Rule 14a-8(e)).

A proposal that is not submitted in compliance with the eligibility or procedural requirements discussed above may be excluded by the corporation. If a corporation wishes to exclude a proposal on eligibility or procedural grounds, the corporation must first notify the shareholder of the deficiency within 14 days of receipt of the proposal and allow the shareholder to correct the problem. The shareholder then has 14 days following receipt of the corporation's notice to correct the deficiency. The corporation can only exclude the proposal if the shareholder fails to adequately remedy the deficiency. If a deficiency cannot be remedied, such as failure to submit the proposal prior to the deadline, the corporation is not required to provide the shareholder notice or an opportunity to cure. *See* Rule 14a-8(f).

II. SUBSTANTIVE GROUNDS FOR EXCLUSION OF A SHAREHOLDER PROPOSAL

In addition to the eligibility and procedural rules, Rule 14a-8(i) provides several substantive means by which a corporation may exclude shareholder proposals from the proxy statement and proxy card, including any proposal that:

- is not a proper subject for action by shareholders under the laws of the corporation's jurisdiction of incorporation;
- would, if implemented, cause the corporation to violate any state, federal or foreign law to which it is subject, or that is contrary to any of the proxy rules;
- relates to a personal claim or grievance against the corporation or any other person, or that is designed to result in a benefit to the shareholder submitting the proposal that is not shared by the corporation's shareholders at large;
- relates to operations that account for less than a specified percentage of the corporation's total assets, net earnings and gross sales for its most recent fiscal year, or is not otherwise significantly related to the corporation's business;
- the corporation does not have the power or authority to implement;
- relates to an election for membership on the corporation's board of directors;

- directly conflicts with one of the corporation's own proposals to be submitted to shareholders at the same meeting;
- the corporation has already substantially implemented;
- substantially duplicates another proposal previously submitted to the corporation by another proponent that will be included in the proxy materials for the same meeting;
- deals with substantially the same subject matter as another proposal that was previously included in the corporation's proxy materials within the preceding five calendar years and received fewer than a specified number of votes at the meeting or meetings; or
- relates to the payment of cash or stock dividends, or to the corporation's ordinary business operations.

If a corporation desires to exclude a shareholder proposal based on one or more of the substantive requirements described above, the proxy rules include detailed procedures that must be followed. *See* Rule 14a-8(i).

III. RESPONSES TO SHAREHOLDER PROPOSALS

Upon receiving a proposal for inclusion in a corporation's proxy materials, the corporation has numerous alternatives for responding to the proposal. The corporation may elect not to dispute inclusion of the proposal, in which case the proposal must be included in the corporation's proxy statement and the proxy card to be used at the annual meeting. In such an event, the corporation may make a recommendation to the shareholders to vote for or against the proposal or may take no position on the proposal. If the corporation determines to recommend a vote against the proposal and desires to include in the proxy statement a statement in opposition to the proposal, the corporation must follow specified filing requirements contained in the proxy rules.

The corporation may also seek to exclude the proposal from the proxy materials based on the procedural or substantive rules discussed above. If the corporation desires to exclude the proposal, the corporation must follow the requirements contained in the proxy rules. As the procedures for opposing a shareholder proposal can be complicated, readers are urged to consult with legal counsel to ensure compliance.

In addition, the corporation may meet with the submitting shareholder and negotiate a mutually agreed resolution of the issue. Many shareholder proposals received by corporations annually are never included in the proxy statement or considered at the annual meeting as a result of these negotiations.

PREPARING FOR THE ANNUAL MEETING

I. TIME AND RESPONSIBILITY SCHEDULE AND CHECKLIST

One of the most important components in conducting a successful annual meeting of shareholders is early and consistent preparation. For some, this preparation begins more than a year prior to the date of the annual meeting. To prepare properly for and coordinate the many activities involved in conducting a successful annual meeting, most corporations prepare a detailed time and responsibility schedule. As its name indicates, the time and responsibility schedule outlines the tasks that must be completed prior to the annual meeting, establishes the expected deadline for completion of the tasks and allocates responsibility among the persons preparing for the annual meeting to complete the required tasks. A good place to start in preparing the time and responsibility schedule for the upcoming annual meeting is with the schedule that was prepared for the most recent annual meeting. Each party that may be responsible to perform any of the required tasks should be consulted and have an opportunity to comment on the form of the time and responsibility schedule.

While the prior year's time and responsibility schedule is an appropriate starting place for the preparation of the schedule for the upcoming meeting, care should be taken to ensure that lessons learned from last year's meeting are incorporated into the current time and responsibility schedule and that any revisions required by changes to the laws, rules and regulations governing the annual meeting are also incorporated. It is important to review the time and responsibility schedule frequently to make corrections required as events change during preparation for the annual meeting. Although the time and responsibility schedule will differ among corporations, it should contain expected deadlines and allocate responsibility for the following tasks at a minimum:

- determination of appropriate notice and record dates for the annual meeting in accordance with applicable rules and regulations;
- determination of an appropriate location in accordance with the corporation's charter documents and reservation of appropriate meeting facilities;
- determination of the corporation's director nominees;
- preparation and adoption of board of directors resolutions to:
  - establish the annual meeting date and record date;
  - approve the corporation's director nominees and other matters to be considered at the annual meeting;

  - approve the proxy statement, annual report to shareholders and other proxy materials for distribution to shareholders; and
  - appoint the inspector of elections for the meeting;
- determination of final date for receipt of shareholder proposals and responsibility for submission of such proposals;
- preparation and distribution of D&O Questionnaires (*See* "Federal Proxy Rules and the Proxy Statement—Due Diligence Regarding Proxy Materials");
- preparation of the proxy statement and form of proxy, and determination of the appropriate date for filing such materials with the SEC and appropriate stock exchange organizations;
- preparation of the annual report to shareholders and filing the annual report with the SEC and appropriate stock exchange organizations;
- distribution of letters to broker-dealers, banks, voting trustees and other clearing organizations regarding beneficial owners;
- arrangements with financial printers to print and distribute the proxy materials and annual report;
- coordination of physical arrangements for the annual meeting, including meeting facilities, security, promotional items for shareholders and transportation and accommodation arrangements for directors, officers and other support people; and
- preparation of appropriate annual meeting documents such as an agenda, script and management presentations.

This is not an exhaustive list of the items that may be included in a time and responsibility schedule for many corporations. The schedule will need to be continually revised and updated throughout the preparation for the annual meeting. Additionally, preparing for and conducting an annual meeting requires extensive coordination among many of the corporation's internal departments, including representatives of the executive, legal, finance and communications departments, as well as among the corporation's outside advisors, such as legal counsel, auditors, transfer agent and proxy solicitor, if one is used.

II. SETTING THE ANNUAL MEETING DATE

Some states require annual meetings to be held within a specified time period following the corporation's prior annual meeting. If a meeting is not held within the specified time period, these states generally give shareholders the right to demand that a meeting be held. Most states leave the setting of the specific annual meeting date to the corporation, whether pursuant to a set date in the corporation's bylaws or by a resolution of the board of directors. In addition, corporations with shares listed for trading on the NYSE are required to hold their annual meeting within a reasonable time after the end of the corporation's fiscal year so that the

information in the annual report is relatively timely. The annual meeting is usually held shortly after the financial statements for the most recent fiscal year have been audited and the annual report of the corporation has been distributed to shareholders. As a result, for a corporation whose fiscal year is the calendar year, the annual meeting of shareholders is generally held in late spring.

III. SETTING THE RECORD DATE

All state corporate statutes allow for the use of a record date to establish the persons eligible for notice of and voting at an annual meeting, whether as an alternative to or replacement of the closing of shareholder records for some time prior to the annual meeting. State corporate law generally allows the record date to be fixed in the bylaws of the corporation or established by a resolution of the board of directors. In addition, the record date must generally be no more than, nor fewer than, a fixed number of days before the date of the annual meeting. For example, under Delaware corporate law, the record date must be no more than 60, nor fewer than ten, days before the meeting date (DGCL Section 213). Corporations typically establish a record date far enough in advance to allow sufficient time for the solicitation of proxies prior to the meeting. Federal proxy rules require that corporations contact institutional record holders at least 20 business days prior to the record date of the annual meeting to inquire whether other persons are the beneficial owners of the corporation's securities and the number of proxies and other soliciting material to supply to the record holder for such beneficial owners.

IV. DETERMINING THE ORDER OF BUSINESS; PREPARING THE AGENDA AND RULES OF CONDUCT

There is no required order of business that must be followed in conducting an annual meeting of shareholders. Nonetheless, a well-organized order of business and agenda are essential elements to conducting a successful annual meeting. Another important element to maintaining control at the annual meeting is preparing clear and understandable rules of conduct for the meeting and making them available for shareholders as they enter the meeting. Such rules will increase the control that the chairperson has over the conduct of the meeting. In preparing the rules of conduct for the annual meeting, readers should note that Robert's Rules of Order are not required and most practitioners recommend against their use. The rules of conduct prepared for the annual meeting should be designed to provide guidelines for an orderly meeting, while providing flexibility to the chairperson to make appropriate modifications and adjustments as the meeting progresses and as the situation may require. In addition, the rules of conduct should include limits on the number of questions that shareholders may ask and the time periods for which shareholders may speak during the meeting. Sample agenda and rules of conduct for an annual meeting are included in this handbook as Appendix D. *See* page D-1.

In addition, most corporations prepare a detailed script for speakers to follow during the meeting, including alternate scenarios to manage various events that may arise during the

meeting (e.g., dealing with an unruly shareholder, a request to speak to matters not on the agenda or a request for cumulative voting, where allowed by state law). For more information on the type of information to include in an annual meeting script, see "Preparing for the Annual Meeting—Preparing for Unexpected Events; Informational Packages and Detailed Meeting Script."

V. PRE-MEETING LOGISTICS

A. LOCATION

The proper location of the annual meeting of shareholders is generally governed by state corporate statutes. Under most of these statutes, annual meetings are permitted to be held inside or outside the state of incorporation in accordance with the bylaws of the corporation. Some states require the meetings to be held at the corporation's principal office unless expressly permitted to be held elsewhere by its charter or bylaws. Bylaws typically defer the actual location decision to the board of directors of the corporation. Some corporations hold their meetings at the same location (generally at or near their corporate headquarters) each year, while some larger corporations with a national shareholder base have found it beneficial to rotate their annual meeting location among a number of metropolitan areas where they have large shareholder density and where a large facility is located. Recent technological advancements offer corporations even more flexibility, including satellite transmissions to various locations or use of the Internet or other electronic sources to hold a meeting with no physical location. *See* "The Meeting—Electronic Annual Meetings and Supplemental Broadcasts" for more information regarding regional and electronic meetings.

Factors to consider in selecting a location for the annual meeting include, among other things:

- the ability of a sufficient number of shareholders to attend the meeting at that location;
- access to the corporation's headquarters or other facilities;
- access to suitable meeting facilities;
- access to appropriate transportation alternatives; and
- the absence of mitigating factors, such as local anti-business climate, previous demonstrations at similar meetings or election-year campaign issues.

Once the geographic location has been selected, the specific meeting facilities should be chosen and reserved as soon as possible. Some meeting facilities are booked a year or more in advance. Factors to consider in selecting a meeting facility include, among other things, exhibit areas, appropriate meeting rooms, access for handicapped shareholders, adequate sound equipment, lighting, seating and ventilation, access to technology connections and expense.

B. PHYSICAL ARRANGEMENTS

Following reservation of the meeting facilities, preparation of the physical arrangements begins. Persons responsible for preparing the physical accommodations for the annual meeting should consider the following items:

- seating arrangements for the directors, officers, legal and accounting advisors, shareholders and other necessary participants;
- shareholder access to microphone stations to address the meeting;
- adequate audio-visual equipment for participants;
- adequate telephone, data and other telecommunications connections;
- arrangements for beverages or other refreshments for meeting participants; and
- hotel accommodations, transportation and parking arrangements for meeting participants.

Those responsible for the physical arrangements should make themselves familiar with the layout of the building and its audio-visual equipment and coordinate the availability of the various services or special arrangements that will be necessary to conduct the meeting. Social events and hotel accommodations for the directors and officers of the corporation, if desired, should also be arranged prior to the meeting.

C. ATTENDANCE RULES

Although shareholders (or their proxy holders) are the only parties with an enforceable right to enter the meeting, many corporations also allow admission to other persons, such as employees of the corporation, representatives of the press, legal counsel, accounting advisors, the inspector of elections, representatives of the corporation's transfer agent and other invited guests. Once it is determined who will be allowed to enter the meeting, those responsible for conducting the meeting must ensure that ample space is provided to allow attendance by all such parties. Corporations should also establish clear policies in advance concerning the attendance of these parties at the annual meeting. Policies that may restrict access by shareholders based on room size, late arrival, etc., should be publicized in the corporation's proxy materials.

To enforce these attendance restrictions, some corporations require attendees to present admission tickets, usually obtained by returning a card provided with the corporation's proxy materials. In addition, many corporations require shareholders to present picture identification prior to entering the meeting. A registration desk is also an important part of enforcing attendance rules. A registration desk will allow verification of the shareholder status of any person who decides to attend the meeting at the last minute. In addition, registration procedures can alert the corporation as to the number of shareholders wishing to address the meeting. Some corporations also arrange for an attorney to be present at the registration desk to arbitrate any non-standard request for admission.

D. SECURITY

Even though fewer disruptive demonstrations have been seen in recent years, with the current state of the economy and recent corporate scandals, many commentators believe that shareholder attendance at annual meetings will increase, and that shareholders will be more active in voicing questions and concerns. With this in mind, security will likely be more important to conducting a successful meeting in coming years. Persons responsible for coordinating security arrangements should consider the following (depending on the likelihood of disruptions):

- becoming aware of the security offered by the facility hosting the annual meeting;
- assigning individuals in the corporation's security or legal department to assist with escorting disruptive shareholders from the meeting;
- contacting the local police department to alert them of the annual meeting, to provide any information that may be known regarding possible disturbances and to coordinate between the police and corporation or hired security personnel; and
- preparing a detailed meeting script containing scenarios to provide guidance in the event of various disruptions.

VI. PREPARING FOR UNEXPECTED EVENTS; INFORMATIONAL PACKAGES AND DETAILED MEETING SCRIPT

At even the most well-planned annual meetings, unexpected events will occur. The best way to minimize the impact of unexpected events is to provide the chairperson and other participants in the meeting with the information needed to handle the various situations that may arise at the annual meeting. Individuals who deal with shareholder questions and comments at the annual meeting must have access to the information needed to respond to a wide array of questions and concerns about the corporation and its business. This information is often prepared by persons in the corporation's communications department and provided to directors and officers for their review prior to the meeting. The chairperson and other corporate personnel should also receive information outlining the legal matters that must occur to properly transact business at the annual meeting, including:

- determination that a quorum is present at the annual meeting;
- the vote required to approve the matters to be considered at the meeting;
- the availability of corporate records and the shareholder list; and
- the procedures for processing and tabulating the votes received by proxy prior to the meeting and/or in person at the meeting.

Preparing a detailed script for the annual meeting will also assist the directors and officers in conducting the meeting. The script generally follows the meeting agenda and adds the specific

text that the chairperson can follow to ensure that the meeting proceeds in an orderly manner. In addition to including appropriate text for conducting the meeting, the person preparing the meeting script should also consider the following:

- The script should provide that all legally required items be accomplished early in the meeting so that the meeting may be adjourned if a disruption occurs during the question and answer session or during management's presentation regarding the corporation's business.
- Instructions and alternative text should be included to respond to various scenarios that may arise, including:
  - requests for cumulative voting;
  - shareholders who exceed the time limits for making comments;
  - generally disruptive shareholders;
  - requests to be heard on matters outside the approved agenda; or
  - shareholders wishing to bring a motion before the meeting.
- The script should include procedures in the event that an emergency or major disturbance occurs that requires evacuation of the meeting facilities. These procedures may include:
  - announcing that a quorum is present for transacting business at the meeting;
  - announcing preliminary results of matters presented at the meeting;
  - adjourning the meeting if necessary; and
  - exiting the meeting room in an orderly fashion, including a description of the appropriate exits for different participants.

A sample annual meeting script is included in this handbook as Appendix E. *See* page E-1.

VII. CORPORATE GADFLIES

Another event that corporations, particularly larger corporations with numerous shareholders, should prepare for is the attendance at the annual meeting of shareholders of so-called corporate "gadflies," who attend annual meetings solely to make complaints, ask disruptive questions or submit proposals that do little more than disrupt the meeting and further their specific social or political agenda. These parties sometimes take extreme positions at meetings to dramatize what they view as a lack of corporate democracy. Some try to dominate the meeting by shouting management down or refusing to abide by the rules of conduct. The tactics used by these shareholders can add additional time to the meeting, and can be very disruptive to the proceedings of the meeting. A well-prepared meeting script, easily understood rules of conduct and an understanding of the corporation's charter documents and the state law governing the annual meeting will assist the chairperson of the meeting in dealing with these

parties. Although corporate gadflies can disrupt the meeting, they have little power to effect change if sufficient proxies have been received to transact business at the meeting and to approve the matters submitted to shareholders. If these shareholders do attempt to cause a disruption, practitioners generally advise corporations to wait out the disruption or, as often occurs, allow other shareholders to request the disruptive shareholders to be silent and permit the meeting to proceed. Rules of conduct that limit the time shareholders are allowed to address the meeting and that are made clear at the beginning of the meeting also assist in discouraging overly disruptive behavior.

VIII. SHAREHOLDER LISTS

Most states provide shareholders the right to inspect a list of the shareholders of the corporation under specified conditions. Shareholders may wish to review the corporation's shareholder list for purposes of soliciting proxies for the upcoming annual meeting. The proxy rules also contain provisions that require corporations to assist parties wishing to solicit proxies or provide information to shareholders. Under Rule 14a-7 of Regulation 14A, corporations are generally required, upon the request of a shareholder and at the corporation's option, to either provide a shareholder list or mail the requesting shareholder's materials on his or her behalf.

In addition, state corporate statutes in most states require that corporations make available to shareholders prior to the annual meeting a list of shareholders entitled to vote at the meeting. Nearly all states require the shareholder list to be available at the meeting, however, some states require shareholders to comply with specified conditions to gain access to the list.

THE MEETING

I. TRANSACTION OF BUSINESS AT THE ANNUAL MEETING

A. VOTING PROCEDURES—QUORUM

State corporate law governs the requirements to properly transact business at an annual meeting, including the requirement that a quorum of votes be present in person or by proxy at the meeting. State law also establishes the procedures by which the presence of a quorum is determined, some of which are found in the state corporate statutes and others of which are found in the corporation's charter documents. Although not determined until the beginning of the meeting, most public corporations seek to determine through the receipt of proxies that a quorum will be present at the meeting well before the meeting date.

In determining whether a quorum is present at an annual meeting, the following should be considered:

- votes represented by shareholders who attend the meeting will generally be included even if the shareholder does not vote at the meeting (unless the shareholder is attending solely to contest the legality of the meeting, in which case the shareholder's shares will not be included in the quorum determination);
- shares represented by proxies with instructions to vote on less than all of the matters are considered present at the annual meeting for quorum purposes; and
- treasury shares and shares held by subsidiaries of the corporation conducting the annual meeting are generally not included in the number of shares present at the annual meeting.

After a quorum has been established, a shareholder leaving the meeting will generally not nullify the presence of a quorum for the meeting or invalidate any action taken at the meeting.

B. VOTING PROCEDURES—VOTE REQUIRED

Requirements differ among state corporate statutes regarding the vote required to approve matters submitted at an annual meeting. Most states require the affirmative vote of a majority of the shares voting at the annual meeting to approve most matters submitted at the meeting. Some states require a higher threshold, the affirmative vote of a majority of the corporation's outstanding voting stock, to approve fundamental corporate matters, while other states have even higher super-majority voting requirements to approve fundamental corporate transactions. In some states, corporations are allowed to specify in their charter documents, within limits, the

vote required to approve matters submitted to shareholders at the annual meeting that may be different from a baseline established in the state corporate law. State corporate statutes should also be reviewed to determine the proper treatment of abstentions, broker non-votes and votes to withhold authority, the determination of which can be complicated.

In addition, the stock exchanges may have requirements regarding shareholder votes on certain matters mandated to be submitted to a vote of the stockholders. For example, Nasdaq Marketplace Rule 4350(i) requires a vote of a corporation's shareholders for certain issuances of additional stock and for these votes, a majority of the minimum vote that will constitute shareholder approval is the majority of the total votes cast on the proposal.

C. VOTING PROCEDURES—ELECTRONIC VOTING

A technological advancement that has impacted the annual meeting is the use of electronic voting. Although commentators generally believe that electronic voting does not increase the number of votes cast at the meeting, they do believe that electronic votes are often cast earlier, which provides the corporation with information regarding the shareholder vote earlier in the process and allows the corporation to change its solicitation efforts if the early results are not as expected. Before allowing shareholders to vote electronically, a corporation must ensure that electronic voting is allowed under (1) the corporate laws of its state of incorporation (*See* Section 212 of the DGCL and 178 of the CCC, which allow shareholders to authorize a proxy through an electronic transmission), (2) the corporation's charter documents and (3) the rules of the stock exchange or market on which the corporation's stock is listed for trading.

If the corporation is authorized to use electronic voting, a technology must be selected that will satisfy state and federal proxy rules. Corporations that elect to use electronic voting should consider providing disclosure in their proxy materials regarding the procedures for using electronic voting and the validity of the procedures under state corporate law. Other issues to consider in creating electronic voting procedures include:

- *Security and Authenticity*. Any complaint that a corporation's voting system can be manipulated electronically could result in negative publicity or even invalidate the results of the meeting.
- *Costs and Expenses*. Although there will be a fee associated with initiating electronic voting, electronic votes are generally less expensive per vote compared to votes received by mail.

II. UNEXPECTED PROPOSALS

The chairperson of the meeting should be prepared to respond to unexpected proposals that may be presented during the meeting. Although these proposals can disrupt the meeting, they can usually be excluded based on provisions contained in the corporation's charter documents and the state corporate law governing the meeting. Corporate charter documents generally require

shareholders to submit matters for consideration at the annual meeting a specified number of days prior to the annual meeting. If proposals are submitted to the corporation after the deadline, they may be excluded on that basis alone. Proposals may also be excluded if they are inconsistent with state corporate law, including if the proposed matter would be illegal or relates to activities that have been delegated by state corporate law to the board of directors of the corporation. If the proposal is not in order for the meeting, the chairperson has a variety of alternatives to exclude the matter rather than taking a vote at the meeting. The chairperson can explain why the matter is out of order and request the shareholder to withdraw the matter and submit it for consideration at next year's meeting.

Proposals that are valid for consideration at the annual meeting should be presented at the meeting. Proposals relating to the conduct of the meeting may be submitted to a vote of the shareholders present. Because most proxy statements grant discretionary authority to the proxy holders to act on matters that properly come before the annual meeting, it is not likely that any undesired proposal that is properly presented will be approved.

III. SHAREHOLDER QUESTIONS

At most annual meetings, the corporation's management makes a presentation to the shareholders on the corporation's progress during the prior fiscal year. The presentation is often followed by a question and answer period during which shareholders are allowed to ask questions of management. Although some shareholders ask questions about actions being considered at the meeting or about the corporation's business, many shareholders, such as the corporate gadflies discussed above, attend the annual meeting simply to make complaints about the direction of the corporation, its stock price or operations or to further a personal agenda. The chairperson of the meeting and the other officers responsible for responding to these questions should be provided sufficient information about the operations of the corporation and should be prepared for the types of questions or comments that may be expected from shareholders.

IV. INFORMATION PROVIDED TO SHAREHOLDERS AT THE ANNUAL MEETING

In addition to state corporate statutes that require corporations to make available a list of the shareholders authorized to vote at the annual meeting, good corporate practice suggests that corporations should make available to shareholders who attend the annual meeting copies of their annual report to shareholders, proxy statement and other proxy materials and Exchange Act reports, such as the corporation's Annual Report on Form 10-K. Some corporations also use the annual meeting to prepare displays or provide promotional materials to shareholders regarding the corporation's business.

V. ADJOURNMENT

State law governs the procedures for adjourning a meeting of shareholders and will typically determine the need for (1) notice of the adjourned meeting, (2) a new record date and (3) a quorum count, and whether new business may be validly taken at the adjourned meeting.

VI. ELECTRONIC ANNUAL MEETINGS AND SUPPLEMENTAL BROADCASTS

Recent technological advances allow corporations to hold electronic meetings with no physical location or to broadcast their annual meetings over the Internet or by satellite or other telecommunications medium to numerous locations and to shareholders, employees or other participants who may be unable to attend the meeting.

A. SIMULCASTING THE ANNUAL MEETING TO NUMEROUS LOCATIONS

A number of corporations now supplement their official meeting with simultaneous broadcasts. Providing expanded access to the annual meeting can be a useful investor and employee relations tool by allowing shareholders and employees who otherwise would be unable to attend the annual meeting to access and participate in the meeting. Some corporations also allow online participants to email questions to management.

B. ELECTRONIC MEETINGS

Delaware corporations are able to not only broadcast their meetings to remote locations, but to hold their annual meetings entirely electronically without a physical location. Section 211(a)(1) of the DGCL allows boards of directors of Delaware corporations that are authorized to select the location for the annual meeting to determine that the meeting not be held at a physical location, but instead be held solely by means of remote communication.

Holding an annual meeting electronically offers the corporation advantages such as:

- reducing the expense of conducting the annual meeting, which can be a costly process for some corporations;
- reducing the amount of senior management and board member time that is occupied by the annual meeting through the elimination of travel that is sometimes required to attend remote annual meetings; and
- providing access to the annual meeting to a broader group of shareholders and employees, who may be unable or unwilling to travel to a physical meeting held at a remote location.

Holding a meeting electronically, however, is still a novel concept with its share of critics. Corporations considering an electronic meeting should consider the following factors:

- Delaware was the first state to authorize entirely electronic annual meetings and few other states have adopted similar changes to their corporate statutes. Corporations should consult with legal counsel to determine if an electronic meeting is authorized by corporate statutes in their state of incorporation.

- The technology used to conduct the meeting must meet state corporate law requirements for shareholder participation. For a shareholder to be "present" for purposes of a quorum and voting under Delaware corporate law, the corporation must have the reasonable ability to:

  - verify that each person deemed present and permitted to vote at an electronic meeting is a shareholder or proxyholder;

  - provide shareholders and proxyholders a reasonable opportunity to participate in and vote at the meeting, including the ability to concurrently read or hear proceedings of the meeting; and

  - maintain a record of each vote or other action taken by a shareholder or proxyholder at the meeting by means of remote communication.

- Because electronic meetings are so new, corporations should review their charter documents (and make any appropriate amendments) to ensure that an electronic meeting is authorized.

- Because electronic meetings will likely increase the number of shareholders participating in the meeting, results may be less predictable as shareholders wait to vote at the meeting or change their vote at the meeting. This is particularly the case with meetings at which controversial proposals will be submitted.

- If more shareholders participate in the electronic meeting, corporations should also be prepared for increased shareholder activism. Electronic meetings have been criticized by institutional investors and corporate gadflies because they eliminate the shareholders' face to face contact with the corporation's management.

Although electronic meetings will likely result in less certainty by corporate management about the outcome of the annual meeting, some commentators believe that the electronic meeting may ultimately provide corporations and shareholders some of the advantages the annual meeting was intended to provide. It is uncertain how many other states will follow Delaware's lead in allowing electronic meetings or how many corporations will take advantage of the technological and statutory changes to hold electronic meetings, but some believe electronic meetings are here to stay and will be an integral part of corporate democracy in the future.

VII. REGIONAL MEETINGS

In addition to supplementing their annual meeting through remote broadcast of the principal meeting, some corporations with geographically diverse shareholder bases have chosen to hold regional open houses or forums around the country to provide shareholders an opportunity to meet and hear firsthand from corporate executives. Even though no action is taken at these meetings, they are shareholder communications tools that allow shareholders to evaluate and interact with management of the corporation.

POST-MEETING ACTIVITIES

I. MINUTES OF THE MEETING AND CORPORATE DOCUMENTS

Preparing minutes of the annual meeting is generally the responsibility of the corporate secretary pursuant to state corporate law or the corporation's charter documents. While minutes of the annual meeting do not affect the validity of the actions taken at the meeting, they are kept to ensure that the records of the corporation are complete. Accurate minutes also avoid confusion relating to the actions taken at the annual meeting. After the minutes have been prepared, the corporate secretary should file the minutes and the other critical meeting documents (such as the Inspector of Election Report, the Oath of the Inspector of Election, the voting results and meeting transcripts) with the corporate records.

Corporations often use recording devices or court reporters to accurately document the proceedings at the annual meeting. Although these tapes or transcripts may be useful to the corporate secretary in preparing the minutes, they should not be a substitute for the preparation of written minutes of the meeting. If a meeting is taped or recorded, corporations often make copies of the tapes available to shareholders upon request. Some corporations also include an archived version of the annual meeting on their website. Corporations that provide access to archived copies of their annual meeting should also consider the information that is discussed at the annual meeting and how that information will be received by shareholders. Commentators suggest that the archive should be placed in a section of the corporation's website where other information is archived and clearly marked. In addition, at some time following the meeting the archived annual meeting should be removed entirely from the corporation's website to avoid access to information that is no longer accurate or current.

II. ORGANIZATIONAL BOARD MEETING FOLLOWING SHAREHOLDERS MEETING

Many corporations hold a board of directors meeting following their annual shareholders meeting. If the corporation's directors are present for the annual meeting, this is an excellent time to convene a meeting of the board of directors. The types of matters discussed and action taken at such meetings, in addition to any action that needs to be taken related to the business of the corporation, generally include:

- electing the officers of the corporation for the ensuing year;
- designating the executive officers of the corporation who are subject to the requirements of Section 16 under the Exchange Act;

- conducting annual shareholders meeting proceedings for the corporation's wholly-owned subsidiaries, if any, to elect directors and officers of such subsidiaries; and
- reviewing the functioning of the just-completed annual meeting of shareholders, and taking any action that may be required for the corporation's next annual meeting of shareholders.

III. REPORT ON THE RESULTS OF VOTING

Because the large majority of shareholders of publicly traded corporations do not attend annual meetings, many corporations issue press releases announcing the results of voting at the meeting. Some corporations also circulate to their shareholders a newsletter or bulletin describing the highlights of the meeting. Corporations can also provide a more detailed discussion of the results of the meeting to shareholders who request a more detailed review. As discussed above, some corporations provide access to an archived version of the annual meeting on their website. These archived recordings can be accompanied by a written description of the results of voting at the meeting. The final determination as to what information to provide and the means by which it is provided is generally based on the investor relations, marketing and expense impact of the various alternatives.

The federal securities laws require that public corporations report the voting results of shareholders meetings in the corporation's Quarterly Report on Form 10-Q covering the quarter in which the meeting took place. Specifically, the Quarterly Report on Form 10-Q must contain:

- the date of the meeting and whether it was an annual or special meeting;
- if applicable, the name of each director elected at the meeting and the name of each other director whose term of office as a director continued after the meeting; and
- a brief description of each matter voted upon at the meeting, stating the number of votes cast for, against or withheld, as well as the number of abstentions and broker non-votes, as to each such matter, including a separate tabulation with respect to each nominee for office.

IV. POST-MEETING REVIEW

Following the annual meeting, many corporations find it useful for all of the staff participants to meet and review the execution of the annual meeting. At such a meeting, the participants review the time and responsibility schedule and meeting agenda to note any items that can be improved for the following year's annual meeting. All aspects of the meeting should be examined for possible improvement, including the proxy solicitation materials, annual report, meeting facilities, agenda, script, security, logistics, proxy solicitor and shareholder participation.

Following the annual meeting, sometimes shortly after the post-meeting review is complete, many corporations begin planning for the following year's meeting, including preparing a new time and responsibility schedule and selecting and arranging the facilities for the next meeting.

CONCLUSION

Preparing for the annual meeting is a complex process requiring the corporation to comply with state and federal laws, stock exchange rules and the corporation's charter documents. Persons preparing for the annual meeting should consult with legal counsel to ensure the numerous requirements are satisfied. In addition, the actions of a host of participants must be coordinated, including representatives of the corporation's executive, legal, finance and communications departments, and representatives of the corporation's outside legal counsel, independent auditors, transfer agent and possibly a proxy solicitor. The key to a successful meeting is starting the preparation process early, enlisting the help of the necessary participants and working diligently to see the process through to completion.

RESOURCES

APPENDIX A:	GENERAL NOTICE AND FILING REQUIREMENTS FOR ANNUAL MEETINGS AND RELATED MATTERS
APPENDIX B:	SAMPLE COMPENSATION COMMITTEE REPORT
APPENDIX C:	SAMPLE AUDIT COMMITTEE REPORT
APPENDIX D:	SAMPLE AGENDA AND RULES OF CONDUCT
APPENDIX E:	SAMPLE ANNUAL MEETING SCRIPT
APPENDIX F:	SELECTED BIBLIOGRAPHY

APPENDIX A

General Notice and Filing Requirements for Annual Meetings and Related Matters[1]

	Meeting and Record Date	Annual Report to Shareholders	Preliminary Proxy Materials	Definitive Proxy Materials	Report of Actions Taken
State Law	Notice must be provided and a record date established that is within a specified number of days prior to the annual meeting.[2]	No Specific Requirement	No Specific Requirement	No Specific Requirement	No Specific Requirement
Federal Securities Law	The proxy rules require certain inquiries to institutional record holders regarding beneficial owners and delivery of proxy materials and annual reports to those beneficial holders. These inquiries must be made no later than 20 business days prior to the record date for the annual meeting. (Rule 14a-13)	An annual report complying with Rule 14a-3 of Regulation 14A under the Exchange Act must be delivered to each shareholder and seven copies must be mailed to the SEC no later than the later of the date on which the annual report is first sent or delivered to shareholders or the date that the corporation files preliminary proxy materials (or definitive materials if preliminary materials are not required) with the SEC. (Rule 14a-3) The proxy rules also require certain inquiries to institutional record holders regarding beneficial owners and delivery of annual reports to those beneficial holders. (Rule 14a-13)	Preliminary proxy statement and proxy card relating to any meeting at which non-routine matters will be considered must be filed with the SEC at least 10 days (or such shorter period as the SEC may authorize) before definitive proxy materials are mailed to shareholders. (Rule 14a-6(a))	Concurrently with or before the mailing of the definitive proxy statement, proxy card and other soliciting materials to shareholders, the corporation must file copies of such materials with the SEC and provide copies to each national securities exchange on which the corporation's securities are listed. (Rule 14a-6(b)) The proxy rules also require certain inquiries to institutional record holders regarding beneficial owners and delivery of proxy materials to those beneficial holders. (Rule 14a-13)	For each matter submitted to a vote of shareholders, the corporation must provide the following information in its Annual Report on Form 10-K or its Quarterly Report on Form 10-Q for the period in which the meeting was held: (a) the date and type (annual or special) of meeting; (b) if directors were elected, the name of each director elected or whose term continues after the meeting; (c) a brief description of each matter voted upon, including the number of votes cast for, against or withheld (as well as the number of abstentions and broker non-votes) for each matter and a separate tabulation for each director nominee and (d) a description of the terms of any settlement with any participant terminating a solicitation in opposition, including the cost to the corporation.

	Meeting and Record Date	Annual Report to Shareholders	Preliminary Proxy Materials	Definitive Proxy Materials	Report of Actions Taken
NYSE	Notice must be provided to the NYSE immediately (in no event later than 10 days before the record date) of the meeting and record date, and the corporation must publicize any meeting to consider non-routine matters. (Listed Company Manual §§ 204 & 401)	An annual report containing audited financial statements (in the format and by the means allowed or permitted by applicable law) must be delivered to shareholders no later than 120 days after the corporation's fiscal year end and filed with the NYSE. (Listed Company Manual §§ 203 & 204)	Preliminary proxy materials relating to specified matters must be filed with the NYSE for review and comment before they become final. (Listed Company Manual §§ 204 & 402)	Definitive proxy statement and proxy card must be filed with the NYSE before or at the same time they are provided to shareholders. (Listed Company Manual § 402)	Corporations must notify the NYSE of the occurrence of numerous specified events. (Listed Company Manual § 204)
AMEX	Shareholders and AMEX must receive notice of the annual meeting at least 10 days before the meeting. AMEX must receive notice of the record date immediately upon its establishment. (AMEX Company Guide §§ 701 & 703)	An annual report containing audited financial statements (in the format and by the means allowed or permitted by applicable law) must be delivered to shareholders and filed with AMEX. (AMEX Company Guide §§ 610 & 701)	Preliminary proxy materials relating to specified matters must be filed with AMEX for review. (AMEX Company Guide § 122, Commentary)[3]	Definitive proxy statement, proxy card and other materials must be filed with AMEX. (AMEX Company Guide § 701)[3]	Corporations must notify AMEX of the occurrence of numerous specified events. (AMEX Company Guide Part 9)
Nasdaq	Nasdaq must be notified of the date of each annual meeting. (Marketplace Rule 4350(e))	An annual report containing audited financial statements (in the format and by the means allowed or permitted by applicable law) must be delivered to shareholders and concurrently filed with Nasdaq. (Marketplace Rule 4350(b))	Preliminary proxy materials relating to matters subject to Nasdaq's Voting Rights Policy must be provided to Nasdaq for review. (IM 4351)[3]	Proxies must be solicited and proxy statements provided to shareholders for all meetings and copies concurrently delivered to Nasdaq. (Marketplace Rule 4350(g))[3]	Corporations must notify Nasdaq of the occurrence of numerous specified events. (Marketplace Rules)

1 The information provided in this Appendix A is not intended to be an exhaustive list of the notice and filing requirements that may be applicable to all corporations. Readers are urged to consult with legal counsel for the requirements applicable to their particular corporation.

2 The following is a list of notice and record date requirements for annual meetings at which routine matters will be considered in states that are popular jurisdictions of incorporation:

	Not More Than	Not Less Than		Not More Than	Not Less Than		Not More Than	Not Less Than
Delaware	60 days	10 days	Massachusetts	60 days (record date only)	7 days (notice only)	New Jersey	60 days	10 days
California	60 days	10 days	Pennsylvania	90 days (record date only)	5 days (notice only)	Maryland	90 days	10 days (notice only)
New York	60 days	10 days	Nevada	60 days	10 days	Illinois	60 days	10 days

3 Amex and Nasdaq rules allow corporations' EDGAR filings to satisfy these proxy material filing requirements. *See* Amex Company Guide §1101 and Nasdaq Marketplace Rule 4310.

APPENDIX B

Provided below is a sample compensation committee report intended as a general guide in preparing the proxy statement. This sample report is not intended to include all of the matters that should be discussed by any particular corporation, and should be tailored for the specific facts related to the compensation paid by the corporation to its officers. Additional model reports can be found in proxy statements filed by other public corporations, which are available on the SEC's EDGAR website.

SAMPLE COMPENSATION COMMITTEE REPORT ON EXECUTIVE COMPENSATION

The Compensation Committee of the Board of Directors (the Compensation Committee) administers the Corporation's executive compensation program and establishes the salaries of the Corporation's executive officers. The Compensation Committee consists of only independent, non-employee Directors, who are appointed by the Board.

Compensation Philosophy

The general philosophy of the Compensation Committee is to provide executive compensation designed to enhance shareholder value, including annual compensation, consisting of salary and bonus awards, and long-term compensation, consisting of stock options and other equity based compensation. To this end, the Compensation Committee designs compensation plans and incentives to link the financial interests of the Corporation's executive officers to the interests of its shareholders, to encourage support of the Corporation's long-term goals, to tie executive compensation to the Corporation's performance, to attract and retain talented leadership and to encourage significant ownership of the Corporation's common stock by executive officers.

In making decisions affecting executive compensation, the Compensation Committee reviews the nature and scope of the executive officer's responsibilities as well as his or her effectiveness in supporting the Corporation's long-term goals. The Compensation Committee also considers the compensation practices of other major United States and international corporations that compete with the Corporation. Based upon these and other factors which it considers relevant, and in light of the Corporation's overall long-term performance, the Compensation Committee has considered it appropriate, and in the best interest of the shareholders, to set the overall executive compensation slightly above the average of companies in the comparison group to enable the Corporation to continue to attract, retain and motivate the highest level of executive personnel.

There are two primary types of compensation provided to the Corporation's executive officers:

- Annual compensation, which includes base salary intended to provide a stable annual salary at a level consistent with individual contributions, and annual performance bonuses intended to link officers' compensation to the Corporation's performance.

- Long-term compensation, which includes stock or other equity based compensation and long-term incentive awards intended to encourage actions to maximize shareholder value.

Annual Compensation

Base Salary

Consistent with its stated philosophy, the Compensation Committee aims to position base salaries for the Corporation's executive officers annually at levels that are slightly higher than the industry, with consideration of the performance of the Corporation, individual performance of each executive and the executive's scope of responsibility in relation to other officers and key executives within the Corporation. In selected cases, other factors may also be considered.

Annual Incentive Bonuses

The Corporation's Annual Incentive Bonus Plan provides for the payment of cash bonuses based on the Corporation's performance in relation to predetermined objectives and individual executive performance for the year then ended. Prior to the beginning of the fiscal year, the Compensation Committee established objectives related to the Corporation's earnings, revenue and shareholder value. Based on the Corporation's performance during **[year]** against these objectives, no bonuses were paid under the Annual Incentive Bonus Plan.

Long-Term Compensation

The Compensation Committee is committed to long-term incentive programs for executives that promote the long-term growth of the Corporation. The Compensation Committee believes that the management employees should be rewarded with a proprietary interest in the Corporation for continued long-term performance and to attract, motivate and retain qualified and capable executives.

Equity Based Compensation

The Compensation Committee grants to executive officers options to purchase shares of the Corporation's common stock under the Corporation's stock option plan that was adopted by the Corporation and its shareholders in **[year].** In **[year],** the Compensation Committee granted options to the executives of the Corporation to purchase an aggregate of **[amount]** shares of the Corporation's common stock. These options were granted at an exercise price equal to the fair market value of the common stock on the date of grant, become exercisable in three cumulative annual installments commencing one year after the date of grant and expire ten years from the date of grant.

Other Long Term Incentives

The Corporation also has a Stock Performance Achievement Plan that provides additional compensation to participants based upon the total shareholder return ranking of the Corporation's common stock compared to that of other stocks in the Standard & Poor's 500 Index over a three-year performance period. Awards under the Stock Performance Achievement

Plan are granted in the form of shares of the Corporation's common stock. The final number of shares received by the officers at the end of the performance period, if any, depends on the Corporation's total shareholder return ranking relative to other companies in the Standard & Poor's 500 Index. By establishing awards in this fashion, the Corporation's executive officers will be highly motivated to improve stock price performance, which would be to their benefit as well as that of the shareholders. Performance during the previous performance period was slightly above the threshold level required for a payout, and therefore, awards were paid at the threshold payout level.

Compensation of Chief Executive Officer

During [**year**], the Corporation's Chief Executive Officer received base annual salary of $[**amount**], which represents a [**percent**] increase over the annual base salary paid to the Chief Executive Officer during [**previous year**].

The Corporation's Chief Executive Officer is eligible to participate in all of the Corporation's long-term incentive programs. During [**year**], the Chief Executive Officer received stock options to purchase [**amount**] shares of the Corporation's common stock as shown on the Summary Compensation Table. The Chief Executive Officer also received an award under the Corporation's Stock Performance Achievement Plan. The number of shares received under the plan depends upon the performance of the Corporation's common stock during the performance period. During the previous performance period, the Chief Executive Officer received [**amount**] shares of the Corporation's common stock. The Summary Compensation Table includes additional information regarding the other compensation and benefits paid to the Corporation's Chief Executive Officer.

Internal Revenue Code Section 162(m)

The Compensation Committee also considers the potential impact of Section 162(m) of the Internal Revenue Code of 1986, as amended (Section 162(m)). Section 162(m) disallows a tax deduction for any publicly held corporation for individual compensation exceeding $1 million in any taxable year for the Chief Executive Officer and the other senior executive officers, other than compensation that is performance-based under a plan that is approved by the shareholders of the corporation and that meets certain other technical requirements. Based on these requirements, the Compensation Committee has determined that Section 162(m) will not prevent the Corporation from receiving a tax deduction for any of the compensation paid to executive officers.

Submitted on [**date**] by the members of the Compensation Committee of the Corporation's Board of Directors.

[Names of Compensation Committee Members]

APPENDIX C

Provided below is a sample audit committee report intended as a general guide in preparing the proxy statement. Although this sample report was prepared to cover the minimum proxy rule requirements, it is not intended to include all of the matters that should be discussed by any particular corporation, and should be tailored for the specific items discussed by the corporation's audit committee. Additional model reports can be found in proxy statements filed by other public corporations, which are available on the SEC's EDGAR website.

SAMPLE AUDIT COMMITTEE REPORT

The Audit Committee of the Board of Directors (the Audit Committee) is composed of independent directors as required by and in compliance with the listing standards of the **[New York Stock Exchange][American Stock Exchange][Nasdaq National Market]**. The Audit Committee operates pursuant to a written charter adopted by the Board of Directors.

The Audit Committee is responsible for overseeing the Corporation's financial reporting process on behalf of the Board of Directors. Management of the Corporation has the primary responsibility for the Corporation's financial reporting process, principles and internal controls as well as preparation of its financial statements. The Corporation's independent auditors are responsible for performing an audit of the Corporation's financial statements and expressing an opinion as to the conformity of such financial statements with accounting principles generally accepted in the United States.

The Audit Committee has reviewed and discussed the Corporation's audited financial statements as of and for the year ended **[date]** with management and the independent auditors. The Audit Committee has discussed with the independent auditors the matters required to be discussed under auditing standards generally accepted in the Unites States, including those matters set forth in Statement on Auditing Standards No. 61 (Communication with Audit Committees), as currently in effect. The independent auditors have provided to the Audit Committee the written disclosures and the letter required by Independence Standards Board Standard No. 1 (Independence Discussions with Audit Committees), as currently in effect, and the Audit Committee has discussed with the auditors their independence from the Corporation. The Audit Committee has also considered whether the independent auditors' provision of information technology and other non-audit services to the Corporation is compatible with maintaining the auditors' independence. The Audit Committee has concluded that the independent auditors are independent from the Corporation and its management.

Based on the reports and discussions described above, the Audit Committee has recommended to the Board of Directors that the Corporation's audited financial statements be included in its Annual Report on Form 10-K for the year ended **[date]** for filing with the Securities and Exchange Commission.

Submitted on **[date]** by the members of the Audit Committee of the Corporation's Board of Directors.

[Names of Audit Committee Members]

RR DONNELLEY

APPENDIX D

The sample agenda and rules of conduct provided below are intended to be a general guide in preparing for the meeting. The sample agenda and rules are not intended to include all of the matters that may be required for any particular corporation. Readers are urged to review the law applicable to their corporation to ensure that matters required to be completed during the meeting are included in the agenda, and to ensure that any rules of conduct applicable to their corporation are provided to shareholders upon entering the meeting.

SAMPLE ANNUAL MEETING OF SHAREHOLDERS
OF
[NAME OF CORPORATION]
AGENDA
[Date]

A. Call the Meeting to Order

1. Introductions
2. Instructions on Rules of Conduct and Procedures
3. Proof of Notice of Meeting
4. Proxies; Existence of Quorum

B. Proposals and Discussion

1. Proposal No. 1 – Election of Directors
    - **[List Director Nominee Names]**

2. Proposal No. 2 – **[Describe additional proposals and include full text of resolutions being considered rather than reading them in their entirety during the meeting.]**

C. Voting

1. Opening of Polls
2. Voting on Proposals
3. Closing of Polls

D. Results of Voting

E. Adjournment

F. Management Presentation

G. Questions and Answers

If you have sent in your proxy card your shares will be voted accordingly.

PLEASE DO NOT SIGN A BALLOT AT THIS MEETING UNLESS YOU WANT TO CHANGE THE WAY YOU VOTED ON YOUR PROXY.

SAMPLE RULES AND PROCEDURES FOR THE CONDUCT OF ANNUAL MEETING

We would like to welcome you to the **[year]** Annual Meeting of Shareholders of **[Name of Corporation]**. In fairness to all shareholders in attendance and in the interest of an orderly meeting, we require that you honor the following rules of conduct:

1. All shareholders and proxy holders must register at the reception desk before entering the room for the meeting.

2. The taking of photographs and use of audio or video recording equipment is prohibited.

3. The meeting will follow the Agenda provided to all shareholders upon entering the meeting.

4. Only shareholders of record or their proxy holders may address the meeting.

5. All questions and comments should be directed to the chairperson of the meeting. You may address the meeting only after you have been recognized.

6. If you wish to address the meeting, please **[go to the nearest microphone station] [raise your hand]**. Upon being recognized, please state your name clearly, your status as a stockholder or a proxy holder and present your question or comment.

7. Each speaker is limited to a total of no more than three questions or comments, no more than one of which may be on any single topic and each of which must be no more than one minute in length.

8. Please permit each speaker the courtesy of concluding his or her remarks without interruption.

9. The views and comments of all stockholders are welcome. However, the purpose of the meeting will be observed and the chairperson or secretary will stop discussions that are:

- irrelevant to the business of the corporation or the conduct of its operations;
- related to pending or threatened litigation;
- derogatory references that are not in good taste;
- unduly prolonged (longer than one minute);
- substantially repetitious of statements made by other stockholders; or
- discussions related to personal grievances.

APPENDIX E

Provided below is a sample annual meeting script intended as a general guide in preparing for the meeting. This sample script is not intended to include all of the matters that may be required for any particular corporation. Readers are urged to review the law applicable to their corporation to ensure that matters required to be completed during the meeting are included in the script.

SAMPLE SCRIPT FOR ANNUAL MEETING

[CORPORATION NAME]

ANNUAL MEETING OF SHAREHOLDERS

[DATE AND TIME]

I. CALL THE MEETING TO ORDER

A. Introductions

Chairperson: Hello, ladies and gentlemen. Will the meeting please come to order. I want to welcome all of you to the annual meeting of shareholders of [**Corporation Name**]. I am [**Name**], Chairperson of the Board of [**Corporation Name**], and I will be presiding at this meeting.

Also present at the meeting today are: [**Introduction of directors, officers and invited guests present at the meeting.**] [**Name**] will act as secretary of the meeting. [**Name of Inspector of Election**], our transfer agent, has been appointed to act as Inspector of Election.

[**Name of representative from independent auditor**], a representative from [**name of independent auditor**], is also present at the meeting. During the question and answer period at the end of the meeting, [**he/she**] will be available to answer questions concerning the corporation's financial statements.

B. Instructions on Rules of Conduct and Procedures

Chairperson: Each of you should have registered at the desk as you entered the meeting. If there are any of you who have not registered, would you at this time please step over to the desk and sign the register.

Upon entering the meeting, each of you was presented with an agenda for the meeting. On the reverse side of the agenda is a list of the rules of conduct for the annual meeting. To conduct an orderly meeting, we ask that participants abide by these rules.

As stated in the rules of conduct, shareholders should not address the meeting until recognized. Should you desire to ask a question or speak during the meeting, please raise your hand. After being recognized, first identify yourself and your status as a shareholder or representative of a shareholder, then state your point or ask your question. As stated in the rules of conduct, we ask that you restrict your remarks to the item of the agenda that is before us.

Thank you for your cooperation with these rules.

[USE ANNEXES A–E, AS NECESSARY.]

C. Proof of Notice of Meeting

Chairperson: The Secretary has delivered an Affidavit of Mailing establishing that notice of this meeting was duly given. A copy of the notice of meeting and the Affidavit of Mailing will be incorporated into the minutes of this meeting. All shareholders of record at the close of business on [**record date**] are entitled to vote at the annual meeting.

D. Proxies; Existence of Quorum

Chairperson: Our first order of business at this meeting is to determine whether the shares represented at the meeting, either in person or by proxy, are sufficient to constitute a quorum for the purpose of transacting business. [**Secretary's Name**] do you have a report?

Secretary: Yes, the shareholders list shows that holders of [ ] shares of common stock of the corporation are entitled to vote at this meeting. We are informed by [**Inspector of Election**] that there are represented in person or by proxy [ ] shares of common stock or approximately [ ]% of all of the shares entitled to vote at this meeting.

Chairperson: Thank you. Because holders of a majority of the shares entitled to vote at this meeting are present in person or by proxy, I declare this meeting to be duly convened for purposes of transacting such business as may properly come before it.

II. PROPOSALS AND DISCUSSION

A. Proposal No. 1—Election of Directors

Chairperson: The next order of business is a description of the matters to be voted on at today's meeting. The first proposal before the shareholders of the corporation is the election of [ ] directors to serve until the annual meeting of shareholders in [ ] and until their successors are duly elected and qualified. The management of the corporation recommends the election of the following persons as directors of the corporation:

[Names of Director Nominees]

B. Proposal No. 2—Additional Proposals

[PREPARE APPROPRIATE SCRIPT DESCRIBING ADDITIONAL PROPOSALS.]

III. VOTING

A. Opening Polls

Chairperson: The polls are now open. If you desire a ballot, please raise your hand to so indicate and it will be provided. The Inspector of Election will provide ballots to those who desire them. If you previously voted by proxy, you do not need to vote today unless you wish to change your vote.

B. Voting on Proposals

Chairperson: The Inspector of Election will now collect any outstanding ballots. If you have brought your proxy or wish to vote by ballot, please provide your proxy or ballot to the Inspector of Election. Again, if you have already voted by proxy, you need not vote today unless you would like to change your vote. Please hold up your hand so that your ballot can be collected.

C. Closing Polls

Chairperson: We now seem to have all the ballots, and since all those desiring to vote by ballot have done so, I hereby declare the polls closed. The ballots and proxies will be held in the possession of the Inspector of Election. The Inspector of Election will count the votes.

[ALLOW BALLOTS AND PROXIES TO BE COUNTED.]

IV. RESULTS OF VOTING

[CONFIRM WITH THE INSPECTOR OF ELECTION THAT BALLOTS HAVE BEEN COUNTED.]

Chairperson: Will the Secretary please report the results of the voting.

Secretary: We have been informed by the Inspector of Election that the ballots have been counted and that the nominees for election to the Board of Directors have been duly elected and [**report any additional results of voting**].

V. ADJOURNMENT

Chairperson: Thank you for attending today's meeting. The meeting is adjourned. We will now have a presentation by the corporation's management, after which we will have a brief question and answer period.

VI. MANAGEMENT PRESENTATION

[REMARKS BY MANAGEMENT.]

VII. QUESTIONS AND ANSWERS

[OPEN THE MEETING TO QUESTIONS BY SHAREHOLDERS.]

RR Donnelley

SHAREHOLDER’S COMMENTS EXCEED TIME LIMIT

Chairperson: I’m sorry, but you have exceeded the time limit set forth in the rules. Please promptly conclude your remarks.

[IF SHAREHOLDER PERSISTS.]

Chairperson: I repeat, you have exceeded the time limit set forth in the rules. Time limits have been imposed so that everyone may have a chance to speak and so that we may conduct the meeting in an orderly manner. Now please take your seat [**so that we may respond to your comments**].

[IF SHAREHOLDER STILL PERSISTS—SEE ANNEX B REGARDING DISRUPTIVE SHAREHOLDERS.]

RESPONSE TO DISRUPTIVE SHAREHOLDER CONDUCT

REQUEST FOR QUIET

Chairperson: I must request that if you are not recognized, please refrain from speaking out so that we may continue with the orderly conduct of this meeting. **[If not in the question and answer period also state—You will have the opportunity to ask questions about the business and financial condition of the corporation after we have conducted the formal items of business of the meeting.]**

[IF SHAREHOLDER PERSISTS.]

SECOND WARNING

Chairperson: I repeat that if you are not recognized, your conduct is out of order. Please keep quiet so that we may continue with the meeting in an orderly manner. Otherwise you will be asked to leave the meeting, and, if necessary, removed from this room.

[IF SHAREHOLDER STILL PERSISTS.]

REMOVAL OF SHAREHOLDER

Chairperson: Sir (or madam), I have repeatedly asked you to stop your disruptive conduct and have advised you that your action is out of order. However, you have chosen not to comply with my request and as Chairperson of this meeting, I must now ask you to leave the meeting. Security, would you please escort this individual from the meeting.

SHAREHOLDER DEMANDING TO BE HEARD ON MATTERS OUTSIDE THE AGENDA

Chairperson: We have established an order of business which is set out in the agenda for this meeting so that we can conduct the meeting in an orderly manner. All discussion at this meeting should be limited to the proposals that are the subject of this meeting.

[IF SHAREHOLDER PERSISTS.]

Chairperson: Your comments go beyond the business of the meeting as set forth in the agenda and are out of order. If you would like to speak with someone from the corporation about this issue, please wait until after the meeting when one of the officers will discuss the matter with you or arrange a mutually convenient time to discuss the matter.

[IF SHAREHOLDER CONTINUES TO PERSIST.]

Chairperson: Rather than debate this point, I will ask the shareholders present to decide whether they agree with me that we follow the order of business as set forth in the agenda or depart from the printed agenda and listen to your remarks at this time.

The question is: Do the shareholders present desire to follow the order of business set forth in the agenda? All shareholders in favor, say "aye." All opposed, "no." The "ayes" have it. We will therefore proceed with the order of business as set forth in the agenda.

[IF SHAREHOLDER CONTINUES TO PERSIST.]

Chairperson: Your comments and conduct at this time are out of order, and if you persist, I will be forced to ask you to leave the meeting.

SHAREHOLDER WISHING TO BRING A MOTION BEFORE THE MEETING

Chairperson: Our Bylaws provide that only business brought before this meeting by or at the direction of our Board of Directors may be considered. The only business noticed and brought before this meeting by the Board is to elect directors and [**other proposals**]. As a result, we are prohibited from addressing your motion at this meeting.

Additionally, the vast majority of our shareholders are voting today by proxy. These shareholders have not been given notice of your proposal and it would be unfair to act on your motion without first giving them notice and the opportunity to consider the substance of your motion.

[IF SHAREHOLDER PERSISTS AND CORPORATION HAS SUFFICIENT PROXIES TO CARRY THE VOTE.]

Chairperson: May I have a motion to table the shareholder's motion.

[Name]: I so move.

[Name]: I second the motion.

Chairperson: All shareholders in favor, say "aye." All opposed, "no." The "ayes" have it. The motion is tabled.

EMERGENCY PROCEDURES

While unlikely, a situation may arise before or during the shareholders meeting that requires deviation from the agenda. In the event of a major disturbance, it may be necessary or desirable to adjourn the meeting as promptly as possible while making sure that all the legal prerequisites to effect corporate action at the meeting have been satisfied.

Chairperson: As Chairperson of this meeting I now rule:

1) notice of this meeting has been properly served;

2) a quorum is present—over [   ]% of the voting power of the corporation is represented by proxy;

3) all items of business are properly before the meeting;

4) the polls are open and will stay open for 48 hours to receive any votes you may wish to cast by proxy or ballot. Mail them to [**address of corporation**]; and

5) I declare the meeting adjourned.

Ballots are available from ushers. A post-meeting report will include the final vote tabulation.

APPENDIX F

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NOTES

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