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THE PUBLIC COMPANY PRIMER

*A Practical Guide to Going Public, Raising
Capital and Life as a Public Company*

INTRODUCTION

The information in this manual is organized by topic in the following chapters.

Chapter I, *DECIDING WHETHER TO GO PUBLIC*, focuses on the factors that should be evaluated in deciding whether to go public.

Chapter II, *PREPARING TO GO PUBLIC*, analyzes matters that the company should review in its business, its operations, its governance and its personnel to

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I. DECIDING WHETHER TO GO PUBLIC

A. TRADITIONAL REASONS TO GO PUBLIC

Reasons for going public have traditionally included:

- *Access to public capital markets*
-

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B. DISADVANTAGES OF GOING PUBLIC

In addition to the burdens placed on public companies by Sarbanes-Oxley (as discussed in the next section), the disadvantages of going public include:

- *periodic reporting;*
- *public disclosure pitfalls;*
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Third, the short-swing profit rules of Section 16(b) of the Exchange Act require that certain profits or deemed profits from the purchase and sale of stock by insiders within a six-month period be returned to the company. In order to minimize the possibilities for insider trading and violation of these rules, many public companies adopt pre-trade clearance procedures and trading policies that limit employee trading to specified window periods commencing after the reporting of quarterly earnings and ending several weeks later (although the window can be closed early or at any time during which insiders have inside information).

5. Effect on Management Decisions

Managers frequently focus on the stock price of the company as a proxy for their performance. This phenomenon is exacerbated if the managers have sig-

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demanding of their audit clients, driving up the costs associated with being publicly-held. In particular, standards created by the PCAOB by which outside auditors will attest to the validity of a companion new requirement that

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In addition, pursuant to Sarbanes-Oxley, and detailed rules subsequently adopted by the SEC, the provision of other non-audit services by outside auditors (such as permitted tax and other non-audit services) requires pre-approval by the company's audit committee and disclosure of the issuer's pre-approval policies in proxy statements and annual reports filed with the SEC. Under SEC rules, the audit committee may not delegate its responsibility with respect to its pre-approval policy to the company's management.

Tax services provided to clients by auditors have recently come under greater scrutiny with respect to auditor independence. Under recently adopted ethics and independence rules by the PCAOB and approved by the SEC, an auditor may not provide certain tax services to executives of a company who are involved with the oversight of the company's financial statements as well as plan, market or opine in favor of certain tax transactions or provide tax services on a contingent basis.

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or falsification of documents in federal investigations and bankruptcy proceed-

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fraud on the SEC, or (iii) to rectify the consequences of a material violation that caused, or may cause, substantial injury to the financial or property interests of the company or its investors. The SEC takes the position that its rule preempts contrary state laws of professional responsibility, and the SEC is still considering an amendment to this rule to require attorneys to withdraw from the repre-

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exclusively on the IPO for a period of months, nor do they include the additional expenses (principally legal and accounting fees) that the company will incur in the future in order to comply with its new responsibilities as a public company (See Chapter VIII, *LIFE AS A PUBLIC COMPANY*.) The fee estimates set forth above would be typical for a “plain vanilla” IPO, assuming the com-

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a. **Convertible Securities**

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recapitalization may be done by way of a stock split, reverse stock split or other

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These requirements, coupled with a concern for potential director liability, can make it difficult for IPO companies to find suitable candidates willing to sit on the board.

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Under the Nasdaq definition of independence, no director qualifies as independent unless:

- *the director is not an employee of the company and has not been an employee for at least three years, and the director is not a member of the*

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chief financial officer with public company experience and, where possible, an audit committee member who qualifies as an “audit committee financial expert.”

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Prior to commencing the IPO process, the company should review the SEC's

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the IPO or cause any onerous conditions upon the occurrence of an IPO. While

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tially controls and procedures designed to ensure that a company is able to timely collect, process and disclose the information, financial and non-financial, required to be disclosed in periodic reports. They include, but are not limited to, controls and procedures which allow information to be accumulated and communicated to a company's management in a manner that permits timely decisions regarding required disclosure. Management, with the participation of

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There are three primary reasons for any party to conduct legal and business review of a company in conjunction with an IPO. The first is to assemble the information required by the registration statement. The second is to ensure that

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assigned responsibility for making sure that they are completed and returned in a timely manner, but, in any event, prior to the initial filing of the registration statement. A sample D&O questionnaire is included as Exhibit F.

Some directors and officers may be offended by the length and intrusiveness of the D&O questionnaire. Although the questionnaire may be a rude awakening, it solicits the same information required of senior executives and directors at public companies on an ongoing basis. The D&O questionnaire has taken on increased importance in light of the changes to corporate governance mandated by Sarbanes-Oxley, the SEC and the stock exchanges. For example, failure to

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discussed with each potential underwriter. (See Section V.A.2 for a more detailed discussion of FINRA's review of underwriters compensation).

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for the company to meet together with its lawyers and accountants one or more times in advance of the organizational meeting to try to identify any issues. Underwriters and their counsel appreciate when companies are forthcoming about issues that may impact the public offering process because it provides

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Non-U.S. Companies

Requirements	Domestic Standard	Foreign Standard	U.S. Companies
Net pre-tax income	(i) \$10 million aggregated over the last three years and a minimum of		

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Non-U.S. Companies

Requirements	Domestic Standard	Foreign Standard	U.S. Companies
Active market makers	N/A	N/A	N/A

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employees, customers and suppliers a greater interest in the issuer and a reason

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to go online for all or a part of their offering and to consult their counsel and the managing underwriter early in the offering process.

The importance of prior planning is heightened by the SEC's focus on the manner in which e-brokers participate in offerings. In online offerings, the SEC

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i.e., companies with a public float of less than \$75 million or, if the company cannot calculate its public float, revenues less than \$50 million in the last fiscal year, must use the same SEC forms as other reporting companies. Regulations S-K and S-X do, however, provide scaled back disclosure for smaller reporting

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brief description of the securities offered, the estimated net proceeds and use of those proceeds and summary financial data. Because of its capsule form and placement at the front of the document, the prospectus summary is a vital portion of the prospectus from a marketing standpoint.

iii. Risk Factors

Another critical part of the prospectus is the Risk Factors section, in which the company describes the potential risks inherent in making an investment in

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The December 2003 interpretive release warned companies to avoid boilerplate presentations in MD&A. The SEC requested companies to focus on the presentation of information and to disclose only such information in MD&A

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to make the same payment. Outside directors are liable only according to their

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encing investor sentiment about the issuer before the investor has been given the opportunity to receive and review the prospectus mandated by the SEC's rules. The SEC enforces these rules strictly and has forced issuers to delay their

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This restraint on publicity may seem onerous to issuers, and in some circumstances it is. Consider also the company contemplating going public that finds itself the target of negative publicity on an online bulletin board or chat room—

IV. FILING THE REGISTRATION STATEMENT

A. FINAL DRAFTING SESSION

A final drafting session typically begins the day before the registration statement is proposed to be filed. This final session often lasts well into the night and

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listed on an exchange or quoted on Nasdaq are required to have CUSIP num-

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allotment. If, on the other hand, the underwriters sell more shares than the firm commitment and customers all take their full “indications of interest” (which is most likely to occur if the shares trade up), then the underwriters would have

prospectus,” it must file it with the SEC on or before the date that it is first used. Free writing prospectuses are subject to the liability provisions of Section 12(a)(2), and may also be the basis for a claim under the anti-fraud provisions of the federal securities laws (e.g. 10b-5).

The SEC also used the Securities Offering Reform rules as a good occasion to clarify what “written” materials are in the context of today’s multi-media environment. Put simply, as now defined, “written communications” are all methods of communication that are not “oral communications.” A “written communication” is any communication that is written or printed, a radio or television broadcast, or a “graphic communication.” The term “graphic communication” covers all forms of electronic media, including, but not limited to, audiotapes, videotapes, facsimiles, CD-ROM, email, web sites, substantially similar messages widely distributed (rather than individually distributed) on telephone answering or voice mail systems, computers, computer networks and other forms of computer data compilation (the last category commonly referred to as “blast voicemails” or “spam,” respectively). A live, real time road show presentation is considered an “oral communication,” but if it is taped, recorded and

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statement to describe the distribution of the questionnaire to potential IPO purchasers by the underwriters. In effect, the disclosure stated that the questionnaire may have been mistakenly interpreted by potential investors as a

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Prompted by advances in electronic media, the SEC has clarified the treatment of electronic road shows in the Securities Offering Reform rules released in 2005.

As discussed above, under the Securities Offering Reform rules, a live, real-time road show to a live audience even if transmitted graphically is an oral communication and not a graphic communication, and therefore not a written communication or a free writing prospectus. Also excluded from the definition

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The new rules permit the use of Internet road shows without many of the conditions the SEC has previously required in the no-action letters. For example, the road show audience does not need to be limited in any way; the road show does not have to be the re-transmission of a live presentation in front of

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VI. THE POST-EFFECTIVE PERIOD

A. ACCELERATION, EFFECTIVENESS AND PRICING

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be oversubscribed and that the secondary market will be strong. Rarely is an

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any selling shareholders receive wire transfers of same day funds for their respective portions of the proceeds of the public offering, net of the underwriting discounts and commissions, and the securities are released to the underwriters.

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There are no specific disclosure requirements if all of the purchasers are

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prepares an offering memorandum that contains substantially the same disclosure as that in a registered public offering in order to facilitate the later registration

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agent) are registered prior to the offering, resulting in the investors acquiring freely tradable shares. The benefit for the issuer is that the shares will not be subject to a liquidity discount as they generally are in a traditional PIPE transaction, where the investor acquires restricted shares.

2. Mechanics

Typically, the securities issued in a PIPE transaction are common or preferred stock, secured or unsecured debentures or some combination. Because

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purchase agreement may contain a blocker provision which limits the amount of shares which may be issued in the PIPE transaction to 19.99%.

In most PIPE transactions, the company is required to file the registration statement covering the resale of the shares of common stock sold to the investors (and the shares of common stock underlying any convertible preferred stock, convertible debentures or warrants) within a specified period of time, which can range from less than 30 days if the company is S-3 eligible, to more than 90 days if the company will have to file an S-1. Eligibility to use these forms is discussed in Section VII.B.1 above. In addition, the registration rights

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VIII. LIFE AS A PUBLIC COMPANY

As noted above, the many advantages of going public should always be weighed against the costs and burdens of doing so. Being a public company is considerably more expensive from an administrative point of view than being

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company shareholders and the investing public fully informed of the company's financial condition and any events that have, or could have, a material impact on the company. This duty is principally embodied in the periodic reporting requirements and disclosure obligations imposed by the Exchange Act and as a condition to listing on the NYSE, and other national exchanges.

1. Continuing SEC Reporting Requirements; Officer Certifications

As a result of filing a registration statement with the SEC and listing securities on the NYSE, the AMEX or Nasdaq, companies become subject to the

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procedures.” To differentiate this larger category of controls and procedures from the subset of internal financial controls which forms a part of this new larger category, SEC rules refer to financial controls plus safekeeping of assets

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- *the company's website address, and whether or not the company posts copies of its periodic reports on its website—and if not, why not;*

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d. Current Reports on Form 8-K

Over the years, the SEC has continued to amend Form 8-K to increase the number of reportable events. With the exception of the triggering events relating to suspensions of trading, earnings releases, Regulation FD disclosure and voluntary “other events” reports, all of the reportable events need to be disclosed on a Form 8-K within four business days (with no opportunity for a brief extension with good reason as is the case with a Form 10-K or Form 10-Q).

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- *change in control of the company;*
- *acquisition or disposition of a significant asset (including a business);*
- *bankruptcy or receivership;*
- *changes in the company's auditor;*
- *disagreements between the company and a director that leads to a director's resignation;*
- *change in fiscal year;*
- *amendments to or waivers of the company's code of ethics for senior executive officers;*
-

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- Each table within each footnote as a separate block of text
- Within each footnote, each amount (*i.e.*, monetary value, percentage and number)

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One of the difficulties faced by investors is determining whether they are entitled to receive a dividend already declared by the board of directors but not

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many reasoned judgment calls in this realm, an experienced securities lawyer can be invaluable to a company in this area.

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goodwill write-offs and the like can make such comparisons easier for the inves-

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selective disclosure, resulting in a Regulation FD disclosure obligation. When assessing whether information is public for Regulation FD purposes, companies should consider the following:

-

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information about the company on its website. The SEC suggests the following techniques to highlight the nature of summary or overview information:

- Using appropriate titles and headings that identify the information as a summary or overview.
-

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to being provided in an Exchange Act report. Therefore, certifications would not apply to such information, although other securities law provisions (including those described above) might be relevant.

(d) **Format of Information.** The August 2008 Release states that the format of information presented on a company website should be focused on readability, not printability, unless SEC rules otherwise explicitly require a printer-friendly format.

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- *A dollar value for all equity-based awards, shown in separate columns for stock and stock options, measured at grant date fair value;*
- *A column reporting the amount of compensation under non-equity incentive plans;*
- *A column reporting the annual change in the actuarial present value of accumulated pension benefits and above-market or preferential earnings on nonqualified deferred compensation (these amounts can be deducted from total compensation for purposes of determining the named executive officers);*
- *A column showing the aggregate amount of all other compensation not reported in the other columns of the table, including perquisites. Perquisites are included in the table unless the aggregate amount is less than \$10,000; and*
- *A column reporting total compensation.*

Disclosure regarding outstanding equity interests includes:

- *The Outstanding Equity Awards at Fiscal-Year End Table, which show outstanding awards representing potential amounts that may be received in the future, including such information as the amount of securities underlying exercisable and unexercisable options, the exercise prices and the expiration dates for each outstanding option (rather than on an aggregate basis); and*
- *The Option Exercises and Stock Vested Table, which shows amounts real-*

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b. Filing and Dissemination

The proxy statement and form of proxy generally are filed with the SEC on

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availability of the proxy materials at a specified website address; a toll-free

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The notice and access model does not apply to proxy solicitation for a busi-

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are available upon request and such employee-shareholders use the email system in the ordinary course of performing their duties and are expected to routinely use the system, or they have alternative means of receiving messages such as through other employees.

In March 2008, the SEC issued a release (the “March 2008 Release”) contain-

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them that it intends to household proxy statements and annual reports. The notice (and the envelope if the notice is sent with other materials) must include the following statement in prominent, boldface type: “Important Notice Regarding Delivery of Security Holder Documents.”

Assuming a company has obtained valid consent, it may send a single copy of its proxy statement and annual report addressed to the shareholders living at the same address as a group (*e.g.*

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proxy materials regarding the nominees of the shareholder (or group) for up to 25% of the company's board seats or at least one director. The nominating

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liable under the Exchange Act may be liable jointly and severally and to the same extent as its controlled person for violations of the Exchange Act. Not-

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The SEC has adopted special limited deferred reporting rules (up to five

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2. Schedule 13G

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For non-affiliate sellers of reporting issuers (

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J. OTHER REQUIREMENTS OF THE FEDERAL SECURITIES LAWS AND THE

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As noted above in Section VIII.A.1, commencing in 2004, public companies are required to disclose in Form 10-Ks and 10-Qs detailed information relating to any company repurchases of its own equity securities during the fiscal quarter, including

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Exchange Act and related SEC rules to file with the SEC and deliver to the company and the relevant market on the offer commencement date a statement

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executive officers and should consider how such loans will be repaid. Some public companies have chosen to forgive such loans prior to filing a registration statement to go public.

9. Prohibition Against Improperly Influencing Auditors

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board of directors. The SEC has a pending proposal that would amend this rule to require attorneys to withdraw from the representation if the company does not respond appropriately to the attorney's report of misconduct, and possibly to engage in a "noisy withdrawal" by notifying the SEC of the withdrawal and the reasons therefor. In April 2004, the General Counsel of the SEC indicated at

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rights while counting tendered securities, (3) terminating withdrawal rights immediately after reproducing or waiving a minimum acceptance condition,

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- the issuer must have maintained a listing on one or more exchanges for at least a year in a foreign jurisdiction that, either singly or together with one other foreign jurisdiction, constitutes the primary trading market for the issuer's subject class of securities.

An issuer that delists in the U.S. or terminates a sponsored American Depositary Receipts facility prior to deregistering must either i) have met the trading volume test at the date of delisting or termination or ii) wait 12 months before it can proceed with deregistration in reliance on the trading volume test.

The amendments also amend Rule 12g3-2(b) to allow a foreign private issuer to claim the Rule 12g3-2(b) exemption immediately upon deregistration, rather than having to wait 18 months as was previously required, provided that the issuer publish English versions of its home country reports and financial statements on its Internet website or through an electronic information delivery system that is generally available to the public in its primary trading market.

The amendments became effective in June 2007.

C. ONGOING DISCLOSURE FOR U.S.-LISTED FOREIGN PRIVATE ISSUERS

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- *audited annual and interim consolidated financial information; and*
- *any document that is or will be the subject of a confidential treatment*

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selling efforts conditions, apply to Category 2 issuers: (a) implementation of

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outside the U.S. or in the U.S. as a private placement or as a Rule 144A placement may be resold immediately outside the U.S. if the provisions of the safe harbor are met. In most cases, a transaction need only comply with two general

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E. The Certificate of Incorporation of the Company, the Bylaws of the Company and the General Corporation Law of the State of Delaware provide for the elimination of personal liability on the part of directors, officers, employees and agents of the Company for monetary damages resulting from certain actions taken in such capacity and permit the indemnification of direc-

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costs, transcript costs, fees of experts, duplicating, printing and binding

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entry of any judgment against Indemnitee or enter into any settlement or compromise which (i) includes an admission of fault of Indemnitee or (ii) does not include, as an unconditional term thereof, the full release of Indemnitee from all liability in respect of such Proceeding, which release shall be in form and substance reasonably satisfactory to Indemnitee. This Section 6(c) shall not apply to a Proceeding brought by Indemnitee under Section 7 below or pursuant to Section 8(a) below.

(d) *Subrogation.* In the event of payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of the Indemnitee. Indemnitee shall execute all docu-

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and the Indemnitee involving the interpretation or enforcement of the rights of the Indemnitee under this Agreement unless a court of competent jurisdiction finds that each of the claims and/or defenses of the Indemnitee in any such proceeding was frivolous or made in bad faith.

(g) *Effect of Certain Resolutions.* Neither the settlement or termi-

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validity, legality and enforceability of the remaining provisions of the Agreement (including, without limitation, all portions of any paragraphs of this

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Company will reserve and keep available a sufficient number of Shares to sat-

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4.3. Performance Objectives.

(a)

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compensation” under Section 162(m) of the Code shall be made after that meeting unless stockholders have reapproved the list of Performance Objectives and other material terms of such Awards, or unless the vesting of the Award is made contingent on stockholder approval of the Performance Objectives and other material terms of such Awards.

(c) *Documentation of Performance Objectives.* With respect to any

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each Nonstatutory Stock Option shall be exempt from requirements applicable to nonqualified deferred compensation under Section 409A of the Code.

(b) Neither the Company nor the Committee shall have liability to a

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Market Value shall be measured as of the date the Option was granted and

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be paid later than 2¹/₂ months after the Tax Year in which the dividend or dis-

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distribution be paid later than 2¹/₂

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10.7. Withholding.

(a) *Withholding Requirements.* Prior to the delivery of any Shares or

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percent (50%) of whose ownership interest representing the right generally to

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(t) “*Option*” means an option to purchase Shares that is granted pur-

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months after the beginning of the period of leave. If the ability to return to service upon the expiration of such leave is guaranteed by statute or contract, but the individual does not return, the leave shall be characterized as a Termination of Service as of a date established by the Committee or Company policy. For purposes of the Plan and any Award hereunder, if an entity ceases to be an Affiliate, Termination of Service shall be deemed to have occurred with respect to each Participant in respect of such Affiliate who does not continue as a Service Provider in respect of the Company or another Affiliate after such giving effect to such Affiliate's change in status.

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EXHIBIT D

SAMPLE DISCLOSURE COMMITTEE CHARTER

I. PURPOSE

The [ABC Company] (the “Company”) has adopted a corporate governance policy to ensure that all disclosures made by the Company to its security holders and the investment community fairly and accurately present the Company’s financial condition and results of operations in all material respects. In furtherance of this policy, the Company has implemented and documented disclosure controls and procedures, including the formation of a disclosure committee (the “Disclosure Committee”), and endeavors to make all disclosures on a timely basis as dictated by applicable securities laws [and stock exchange]

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3. Certificates of internal reports since [*] concerning compliance with covenants contained in the agreements referred to in D(1) above.
4. Any documents or agreements of the Company or any of its subsidiaries evidencing material financing arrangements, including mortgages, sale and

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20. Agreements relating to the purchase or sale by the Company or any significant subsidiary of securities (equity or debt).
21. All material secrecy, confidentiality and nondisclosure agreements of the Company or any significant subsidiary.
22. Samples of all form purchase and sales orders, invoices and other forms of agreements and instruments regularly used by the Company and each significant subsidiary.

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4. Any litigation involving an executive officer or director or affiliate of the Company concerning bankruptcy, criminal activity, securities law or business practices since [*].
 5. All audit response letters from the Company's attorneys to the independent public accountants regarding litigation in which the Company or any subsidiary is or may be involved.
- I. *Real Property*
1. A schedule of all properties owned, operated or managed by the Company or any of its subsidiaries, identifying for each such property:
 - (a) Approximate acreage of land and square footage of improvements;
 - (b) Whether owned, managed or leased and, if leased, the name of the landlord;

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or its subsidiaries' business, including all information on registrations and

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6. Company projections for future periods.

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EXHIBIT F

SAMPLE DIRECTOR AND OFFICER QUESTIONNAIRE•*

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GENERAL

QUESTION 1. (S-K-Items 401(a), (b), (c) and (e)(1); S-1-Item 11(k)):

- (a) We plan to report your name, age and principal occupation, your principal occupations and employment during the last five years, and the name and principal business of any corporation or other organization in which such occupations and employment are or were carried on

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QUESTION 9. (Nasdaq Manual Rule 4350; NYSE Listed Company Manual §303A.02):*

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QUESTION 11. (Nasdaq Manual Rule 4350; NYSE Listed Company Manual §303A.02):

For purposes of this Question 11, please include in your response any relationships excluded by the thresholds contained in Questions 6 through 11.

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QUESTION 14. (S-K-Items 401(f) (3) and (4); S-1-Item 11(k)):

During the past ten years⁽⁶⁾, have you been the subject of any order, judgment or decree (not subsequently reversed, suspended or vacated) of (i) any court of competent jurisdiction permanently or temporarily enjoining or otherwise limiting you from (x) acting as a futures commission merchant, introducing broker, commodity trading advisor, commodity pool operator, floor broker, leverage transaction merchant, any other person regulated by the U.S. Commodity Futures Trading Commission, or an associated person of any of the foregoing, or as an investment adviser, underwriter, broker or dealer in securities, or as an

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TRANSACTIONS(c)

QUESTION 24. (S-K-Item 404(a); S-1-Item 11(n)):

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Company or any of its subsidiaries has a beneficial interest, to be performed in

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SELLING SHAREHOLDERS(d)

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(b) Please indicate below information as to all sales and dispositions

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In interpreting the above-described provisions, the Securities and Exchange Commission has taken the position that a person has indirect beneficial ownership

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Annex A to Questionnaire

List of the Company's Subsidiaries

[To be completed]

List of the Company's Parente-EA1geEY

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Annex B to Questionnaire

Questions Regarding Financial Expertise

The Securities and Exchange Commission has adopted rules requiring the

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[Form of Transmittal Letter]

Dear

,

[Company Name], a [Delaware] corporation] (the “Company”), is preparing a
Registration Statement in connection with the registration of (a) of

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**INSTRUCTIONS FOR PREPARATION AND DISTRIBUTION
OF THE QUESTIONNAIRE**

Preparation

In preparing the Questionnaire, these Instructions should not be included, and the references in the form of Questionnaire set forth below to the following lettered paragraphs of these Instructions should be deleted:

- (a) Insert the number of shares or principal amount of the securities being registered.

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C. Marketing and Customers

1. Customer profile

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G. Management Information Systems

1. Description of systems in place
 - Database management
 - Financial
2. Capabilities and limitations of systems
3. Internal controls over financial reporting
4. Recent and planned innovations

III. Financial Information

A. Historical Financials to Date

1. Income statement
 - Detailed schedule of revenue and gross profit by product
 - Detailed schedule of SG&A by line item
 - Detailed depreciation and amortization schedules
 - Revenue and expense recognition policy and comparison to industry standards
 - Analysis of budget vs. actual results to date
 - Tax information
 - Detail on any historical or projected non-recurring items
 - Seasonality
2. Balance sheet

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EXHIBIT H

SAMPLE ORGANIZATIONAL MEETING AGENDA

● **Organizational Matters**

Introduce working group

- Management
- Underwriters
- Company counsel
- Underwriters counsel
- Auditors
- Review working group list

● **Structure of the Offering**

Corporate entity to be taken public

- Legal, tax, ownership issues

Offering size

- Overallotment option
- Selling stockholders

Use of proceeds

Lock-up

- Time period
- Persons covered

Distribution considerations

- Domestic/International
- Directed shares
- Syndicate structure

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Participants

Company	CO	Underwriters' Counsel	UC
Managing Underwriter	UW	Accountants	A
Company Counsel	CC	Financial Printer	P
<u>Week of</u>	<u>Activity</u>		<u>Responsibility</u>

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EXHIBIT J

**SAMPLE AUDIT COMMITTEE CHARTER
[NYSE Company Version]**

1. STATUS

The Audit Committee (the “

4. RESPONSIBILITIES

The Committee will:

(1) Review and discuss the annual audited financial statements and the Company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations" with management and the independent auditors. In connection with such review, the Committee will:

- Discuss with the independent auditors the matters required to be discussed by Statement on Auditing Standards No. 61 (as may be modified or supplemented) and the matters in the written disclosures required by the applicable requirements of the Public Company

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Company's selection or application of accounting principles, and major issues as to the adequacy of the Company's internal controls and any special audit steps adopted in light of material control deficiencies; and (b) analyses prepared by management and/or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analysis of the effects of alternative GAAP methods on the financial statements and the effects of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of the Company; and

- Discuss policies and procedures concerning earnings press releases and review the type and presentation of information to be included in

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- Obtain confirmation and assurance as to the independent auditors' independence, including ensuring that they submit on a periodic basis

5. PROCEDURES

(1) *Action.*

A majority of the members of the entire Committee shall constitute a quorum. The Committee shall act on the affirmative vote a majority of members present at a meeting at which a quorum is present. Without a meeting, the Committee

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- *[The following is suggested as a best practice by NYSE rules as to CEO]* in determining the long-term incentive component of executive compensation, the committee shall consider the Corporation's performance and rela-

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- The Committee shall promptly inform the Board of the actions taken or issues discussed at its meetings. This will generally take place at the Board meeting following a committee meeting.

6. PROCEDURES

The Chair of the Committee shall establish such rules as may from time to time be necessary or appropriate for the conduct of the business of the Committee. The Chair shall appoint as secretary a person who may, but need not, be a member of the Committee. A certificate of the secretary of the Committee setting forth the names of the members of the Committee or actions taken by the Committee shall be sufficient evidence at all times as to the persons constituting the Committee or such actions taken.

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EXHIBIT M

SAMPLE CORPORATE GOVERNANCE GUIDELINES

The following Corporate Governance Guidelines (the “*Guidelines*”) have been adopted by the Board of Directors (the “*Board*”) of (the “*Corporation*”) to assist the Board in the exercise of its responsibilities. These Guidelines reflect the Board’s commitment to monitor the effectiveness of

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considered by the Board at each of its specified meetings during the year. Each meeting agenda shall include an opportunity for each committee chair to raise

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LEADERSHIP DEVELOPMENT

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EXHIBIT N

**PROCEDURES FOR OBTAINING EDGAR CODES
AND PAYMENT OF FILING FEES**

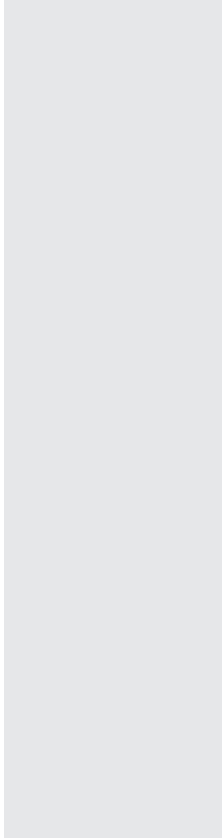
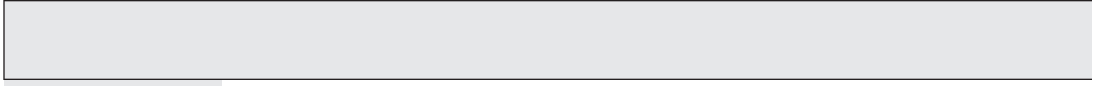
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EXHIBIT O

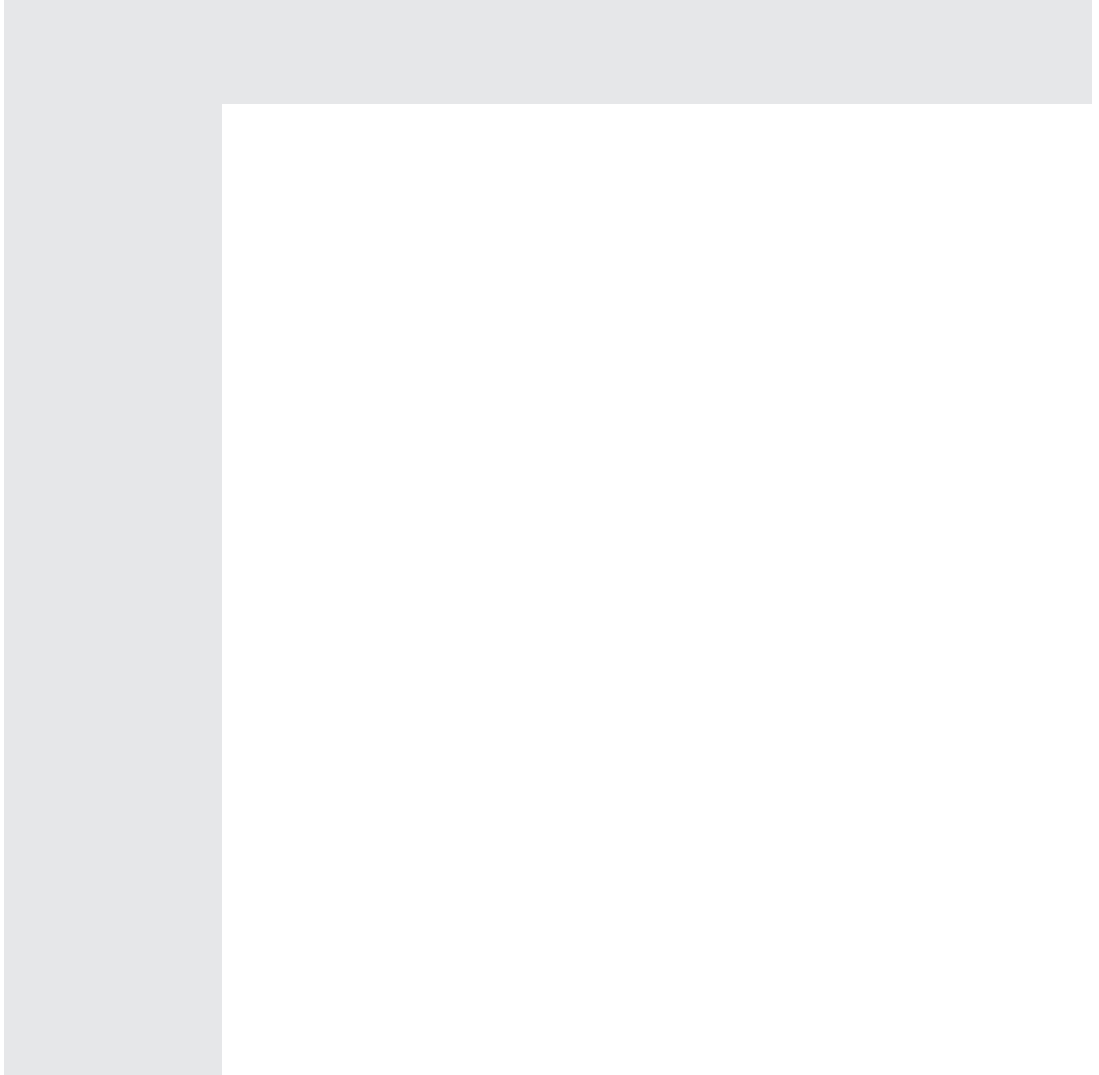
**VARIABLE EFFECTS OF SECURITIES OFFERING REFORM
RULES EFFECTED IN 2005 FOR DIFFERENT ISSUER TYPES**

	Non-reporting (including voluntary filers)	Unseasoned (but reporting)	Seasoned	WKSI
Shelf registration statement reforms	N/A	N/A	Additional information may be omitted from base prospectus, and incorporated by reference, e.g., description of business and capital stock (Rule 430B)	Same as—and base prospectus omissions can include description of securities, plan of distribution, whether or not a primary or secondary offering and names of selling shareholders
	N/A	N/A	Selling shareholders and plan of distribution in base prospectus may be modified after effectiveness by supplement or Exchange Act reports	Same as
	N/A	N/A	Can register any amount of securities but need to refile every three years (limited six month extension while awaiting a new registration statement becoming effective)	Same as, except that registration statement does not need to provide the amount of securities to be registered and new registration statement is automatically effective

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