

AUDIT COMMITTEE RESPONSIBILITIES & RISK MANAGEMENT

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CONTENTS:

- I. INTRODUCTION
- II. THE BUSINESS JUDGMENT RULE
- III. AUDIT COMMITTEE COMPOSITION
- IV. AUDIT COMMITTEE FUNCTIONS AND RESPONSIBILITIES
- V. DOCUMENTATION OF COMMITTEE MEETINGS AND ACTIVITIES
- VI. THE AUDIT COMMITTEE CHARTER

I. INTRODUCTION

This paper is part of a series of papers that cover essential public and private company audit committee functions and responsibilities in a quick-read summary format. The topics in this paper cover duties and responsibilities. For the most part, citations to statutes and case law have been omitted and are contained in other materials. Audit committees are regulated or impacted by numerous statutes, cases, rules, regulations and pronouncements. While some audit committee responsibilities are mandatory, other committee functions and responsibilities are discretionary depending on the circumstances. Although an increasing number of the functions and responsibilities are specified by statute, rule or regulation, an audit committee's standard of care remains significantly dependent on due diligence and prudent judgment. Additional materials can be found at <http://davidtate.us>.

Contact me if you are looking for a speaker on these or other audit committee topics, or if you are looking for help with audit committee activities including help with an audit committee evaluation process.

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Note: Independence Standards Board Standard No. 1, relating to outside auditor independence, has

been superseded, but is still referenced in various statutes, rules and regulations. Public Company Accounting Oversight Board (PCAOB) Rule 3526 has replaced Independence Standards Board Standard No. 1. Rule 3526 is summarized along with PCAOB Rules 3523 and 3525 in the paper entitled Outside Auditor Communications with the Audit Committee.

II. THE BUSINESS JUDGMENT RULE

The audit committee is a sub-committee of the board. Members of the committee are directors. Thus, the business judgment rule provides a standard of care for the audit committee.

In summary, the business judgment rule provides that a director should undertake his or her duties:

- In good faith, with honesty and without self-dealing or improper personal benefit;
- In a manner that the committee member believes to be in the best interests of the corporation and its shareholders; and
- With the care, including reasonable inquiry, that an ordinarily prudent person in a like position would use under similar circumstances.

The director or audit committee member is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by any of the following:

- Officers or employees of the corporation whom the director believes to be reliable and competent in the relevant matters;
- Legal counsel, independent accountants or other persons as to matters that the director believes are within the person's professional or expert competence; or
- A committee of the board on which the director does not serve, as to matters within that committee's designated authority, so long as the director acts in good faith, after reasonable inquiry as warranted by the circumstances, and without knowledge that would cause reliance to be unwarranted.

Court cases also discuss audit committee and director responsibilities, highlighting duties and responsibilities to proactively exercise due diligence, spot red flags, and address issues. Cases are contained in other separate materials.

III. AUDIT COMMITTEE COMPOSITION

The following discussion is an overview of the federal statutes, related rules and regulations, and stock exchange provisions that have been enacted to specify audit committee member composition and qualification requirements for U.S. domestic companies that are issuers of securities listed on a national securities exchange or an interdealer quotation system of a national securities association. The requirements in various circumstances may be different for other entities.

A. Federal Statutes, and Related Rules and Regulations

Public Company Audit Committees. Section 301 of the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley) requires that each member of the audit committee shall be a member of the board of directors and shall be independent. To be independent, an audit committee member, other than in his or her capacity as a member of the board of directors, the audit committee, or any other board committee, may not accept any consulting, advisory or other compensatory fee from the company, or be an affiliated person of the company or any subsidiary of the company.

Disclosure of Audit Committee Financial Expert. Sarbanes-Oxley §407 directs the SEC to issue rules requiring each issuing company to disclose whether or not, and if not, why not, the audit committee of that company has at least one member who is a financial expert. Section 407 further states that the SEC shall consider whether the person has, through education and experience as a public accountant or auditor or a principal financial officer, comptroller, or principal accounting officer of an issuer, or from a position involving the performance of similar functions:

- An understanding of generally accepted accounting principles and financial statements;
- Experience in the preparation or auditing of financial statements of generally comparable companies, and the application of generally accepted accounting principles in connection with accounting for estimates, accruals, and reserves;
- Experience with internal accounting controls; and
- An understanding of audit committee functions.

SEC Regulation S-K, Item 407 further defines the qualifications necessary to be a “financial expert.”

SEC Rule 10A-3. In pertinent part with respect to audit committee member composition, SEC Rule 10A-3 of the Securities and Exchange Act of 1934 (Securities Exchange Act) requires that each audit committee member be a member of the board of directors, and be independent.

B. Stock Exchange (SRO) Rules

1. NYSE Listed Company Manual

Audit Committee Requirement. New York Stock Exchange (NYSE) Listed Company Manual §303A.06 requires that each listed company have an audit committee that satisfies the requirements of SEC Rule 10A-3.

Audit Committee Composition and Other Requirements. The audit committee must have a minimum of three members, and in addition to any requirement of SEC Rule 10A-3(b)(1) of the Securities Exchange Act, each audit committee member must satisfy the independence requirements stated in NYSE Listed Company Manual §303A.02. NYSE Listed Company Manual §303A.07.

Each audit committee member must be financially literate, and at least one audit committee member must have accounting or related financial management expertise; each member also must have sufficient time available to perform the functions and responsibilities of an audit committee member. NYSE Listed Company Manual §303A.07.

2. NASDAQ Stock Market Rules

Audit Committee Composition. NASDAQ Marketplace Rule 4350(d)(2) requires that each issuer have an audit committee that is comprised of at least three members, each of whom must be independent and meet the independence rules set forth in SEC Rule 10A-3(b)(1) of the Securities Exchange Act; must not have participated in the preparation of the financial statements of the company or any current subsidiary of the company during the past three years; and must be able to read and understand fundamental financial statements, including a company's balance sheet, income statement, and cash flow statement. At least one member of the audit committee must have past employment experience in finance or accounting; requisite professional certification in accounting; or any other comparable experience or background which results in that person's financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities. NASDAQ Marketplace Rule 4350(d)(2).

3. American Stock Exchange Company Guide

The American Stock Exchange maintains similar audit committee composition and member qualification requirements. See American Stock Exchange Company Guide at §803.

IV. AUDIT COMMITTEE FUNCTIONS AND RESPONSIBILITIES

The following discussion covers audit committee functions and responsibilities that are specified or required by statute, rule or regulation. However, the business judgment rule always also still applies with respect to the audit committee's satisfaction of its functions and responsibilities, and should be viewed as the general standard requiring due diligence, etc., in all circumstances.

A. Federal Statutes and Related Rules and Regulations

Public Company Audit Committees. With respect to audit committees of public companies, Sarbanes-Oxley §301 requires that:

- The audit committee, in its capacity as a committee of the board of directors, is responsible for the appointment, compensation, and oversight of the work of the outside auditor (including resolution of disagreements between management and the auditor regarding financial reporting).
- The outside auditor must report directly to the audit committee.
- The audit committee is authorized to hire independent counsel and other advisers to help the committee perform its duties.
- The audit committee must establish procedures for the receipt, retention, and treatment of

complaints received by the company regarding accounting, internal accounting controls, or auditing matters; and for confidential, anonymous submission by company employees of concerns regarding questionable accounting or auditing matters. SEC Regulation S-K, Item 407 also requires that there be a process for shareholders to communicate with the board.

-The company must provide appropriate funding, as determined by the audit committee, for compensation of the outside auditor employed for the purpose of issuing an audit report.

SEC Regulation S-K, Item 407 requires that the audit committee must disclose whether it has reviewed and discussed the audited financial statements with management; discussed with the outside auditor the matters covered by Statement on Auditing Standards (SAS) No. 114; received the written disclosures and the letter from the outside auditor required by Independence Standards Board No. 1; and recommended to the board of directors that the audited financial statements be included in the company's annual report for filing with the SEC. SEC Regulation S-K, Item 407 in part also requires the company to disclose whether or not the audit committee has a charter. See also SEC Regulation S-K, Item 304, which requires the company to provide detailed disclosures in certain circumstances when there is, or has been during the two most recent fiscal years, a change in the outside auditor that was engaged to audit the financial statements of the company or of a significant subsidiary of the company.

Corporate Responsibility for Financial Reports. Sarbanes-Oxley §302 requires the chief executive and chief financial officers to certify their knowledge of the truth of each annual and quarterly report, their responsibility for designing, establishing, maintaining and evaluating the effectiveness of internal controls, and whether or not there were significant changes in internal controls or in other factors that could significantly affect internal controls subsequent to the date of their evaluation, including any corrective actions relating to significant deficiencies and material weaknesses. The signing officers also must state that they have disclosed to the company's outside auditor and the audit committee all significant deficiencies in the design or operation of internal controls that could adversely affect the company's ability to record, process, summarize, and report financial data, and have identified for the company's outside auditor any material weaknesses in internal controls; and any fraud, whether or not material, that involves management or other employees who have a significant role in the company's internal controls.

Improper Influence on the Conduct of Audits. Sarbanes-Oxley §303 makes it unlawful for any officer or director, or any other person acting under their direction to take any action to fraudulently influence, coerce, manipulate, or mislead the outside auditor for the purpose of making the company's financial statements materially misleading.

Management Assessment of Internal Controls. Sarbanes-Oxley §404 directs the SEC to prescribe rules requiring each annual report to contain an internal control report that states management's responsibility for establishing and maintaining an adequate internal control structure and procedures for financial reporting; and that contains an assessment, as of the end of the most recent fiscal year of the company, of the effectiveness of the company's internal control structure and procedures for financial reporting. SEC guidance in part revises requirements regarding the outside auditor's attestation report. The auditor must provide an opinion on the effectiveness of internal control over financial reporting to protect against the risk of material financial misstatement, but is no longer required to provide an opinion on management's evaluation process. The SEC also amended its rules to define the term

“material weakness” as “a deficiency, or combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company’s annual or interim financial statements will not be prevented or detected on a timely basis.”

Generally, the term “internal control over financial reporting” is defined as a process designed by, or under the supervision of, the company’s principal executive and principal financial officers, and effected by the company’s board of directors, management and other personnel, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles.

SEC Regulation S-K, Item 308, requires management’s annual report on the company’s internal control to contain a statement of management’s responsibility for establishing and maintaining adequate internal control; a statement identifying the framework used by management to evaluate the effectiveness of the company’s internal control over financial reporting; management’s assessment of the effectiveness of the company’s internal control over financial reporting; and a statement that the outside auditor that audited the financial statements has issued an attestation report pertaining to internal control over financial reporting. SEC Regulation S-K, Item 308 also requires the disclosure of any change in the company’s internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the company’s internal control over financial reporting.

Code of Ethics for Senior Financial Officers. Sarbanes-Oxley §406 directs the SEC to issue rules requiring each issuing company to disclose whether or not the company has adopted a code of ethics for senior financial officers, and if the company has not, the reason why not.

Real Time Issuer Disclosures. Sarbanes-Oxley §409 requires each issuing company to disclose to the public on a rapid and current basis additional information concerning material changes in the financial condition or operations of the company, in plain English, as the SEC determines is necessary or useful for the protection of investors and in the public interest. See also Regulation S-K, Item 307, requiring the company to disclose the conclusions of the company’s principal executive and principal financial officers regarding the effectiveness of the company’s disclosure controls and procedures. The term “disclosure controls and procedures,” is defined to mean controls and other procedures designed to ensure that information required to be disclosed by the company in the reports that it files or submits under the is timely and accurately recorded, processed, summarized and reported.

Whistleblower and Anti-Retaliation Protections

Whistleblower Protection for Employees of Publicly Traded Companies. Pursuant to Sarbanes-Oxley §806, no issuing company, or any company officer, employee, contractor, subcontractor may discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee because of any lawful act done by the employee to provide information or assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of any rule or regulation of the SEC, or any provision of federal law relating to fraud against shareholders.

Anti-Retaliation Against Informants. Pursuant to Sarbanes-Oxley §1107, it is unlawful for a person to knowingly and with the intent to retaliate, take any action harmful to any person, including interference with the employment or livelihood of the person, for providing to a law enforcement

officer any truthful information relating to the actual or possible commission of a federal offense.

Auditor Independence and Services

Services Outside the Scope of Practice of Auditors. Sarbanes-Oxley §201 provides that a public accounting firm may not provide to an issuer contemporaneously with the audit, any non-audit service, including:

- Bookkeeping or other services related to the accounting records or financial statements of the audit client;
- Financial information systems design and implementation;
- Appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
- Actuarial services;
- Internal audit outsourcing services;
- Management functions or human resources;
- Broker or dealer, investment adviser, or investment banking services;
- Legal services and expert services unrelated to the audit; and
- Any other service that the Public Company Accounting Oversight Board determines, by regulation, is impermissible.

However, the outside auditor may be engaged to provide a non-audit service, including tax services, that is not described in the bulleted list above, but only if the activity is approved in advance by the audit committee in accord with the provisions of §202.

Preapproval Requirements. Pursuant to Sarbanes-Oxley §202, all auditing services (which may include comfort letters), and allowable non-auditing services provided to an issuer company by the outside auditor must be preapproved by the company's audit committee. Section 202 provides additional criteria that must be met to satisfy the preapproval process.

Audit Partner Rotation. A public accounting firm may not provide audit services to an issuer company if the lead (or coordinating) audit partner (having primary responsibility for the audit), or the audit partner responsible for reviewing the audit, has performed audit services for that company in each of the five previous fiscal years. See Sarbanes-Oxley §203.

Auditor Report to Audit Committee. Sarbanes-Oxley §204 requires that the outside auditor timely report to the audit committee:

- All critical accounting policies and practices to be used;

-All alternative treatments of financial information within generally accepted accounting principles that have been discussed with management, ramifications of the use of alternative disclosures and treatments, and the treatment preferred by the outside auditor; and

-Other material written communications between the outside auditor and management, such as any management letter or schedule of unadjusted differences.

Conflicts of Interest. It is unlawful for a public accounting firm to perform any audit service if a chief executive officer, controller, chief financial officer, chief accounting officer, or any person serving in an equivalent position for the company, was employed by that accounting firm and participated in any capacity in the audit of that company during the one-year period preceding the date of the initiation of the audit. See Sarbanes-Oxley §206.

SEC Rule 10A-3. In pertinent part with respect to functions and responsibilities, Rule 10A-3 of the Securities Exchange Act requires that:

-The audit committee, in its capacity as a committee of the board, is responsible for the appointment, compensation, retention and oversight of the outside auditor (including resolution of disagreements between management and the outside auditor).

-The audit committee must establish procedures for the receipt, retention, and treatment of complaints regarding accounting, internal controls or auditing matters, and the confidential, anonymous submission by employees of concerns regarding accounting or auditing matters.

-The audit committee has authority to engage independent counsel and other advisors.

-The company issuer shall provide the funding that is determined necessary by the audit committee to compensate the outside auditor, compensate advisors employed by the audit committee, and pay the administrative expenses of the audit committee.

B. Stock Exchange (SRO) Rules

1. NYSE Listed Company Manual

Audit Committee Requirement. NYSE Listed Company Manual §303A.06 requires each listed company to have an audit committee that satisfies the requirements of SEC Rule 10A-3 of the Securities Exchange Act.

Additional Requirements of the Audit Committee. NYSE Listed Company Manual §303A.07 contains the following additional audit committee requirements:

The audit committee must have a written charter that addresses:

1. The committee's purpose which, at minimum, must be to:

-Assist board oversight of the integrity of the company's financial statements, the company's compliance with legal and regulatory requirements, the outside auditor's qualifications and independence, and the company's internal audit function and outside auditors; and

-Prepare an audit committee report as required by the SEC to be included in the company's annual proxy statement;

2. An annual performance evaluation of the audit committee; and

3. The duties and responsibilities of the audit committee which, at a minimum, must include the requirements of SEC Rule 10A-3(b)(2)-(5) of the Securities Exchange Act and to also:

-At least annually, obtain and review a report by the outside auditor describing: (1) the firm's internal quality-control procedures; (2) any material issues raised by the most recent internal quality-control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, and any steps taken to deal with any such issues; and (3) to assess the auditor's independence and all relationships between the outside auditor and the company. Commentary to §303A.07 states that the audit committee should evaluate the auditor's qualifications, performance and independence.

-Discuss the company's annual audited financial statements and quarterly financial statements with management and the outside auditor, including reviewing the company's disclosures under Management's Discussion and Analysis of Financial Condition and Results of Operations.

-Discuss the company's earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies.

-Discuss policies with respect to risk assessment and risk management.

-Meet separately and periodically with management, with the internal auditors (or other personnel responsible for the internal audit function) and with the outside auditor.

-Review with the outside auditor any audit problems or difficulties and management's response.

-Set clear hiring policies for employees or former employees of the outside auditor.

-Report regularly to the board of directors, and review with the full board any issues that arise with respect to the quality or integrity of the company's financial statements, the company's compliance with legal or regulatory requirements, the performance and independence of the company's outside auditor, and the performance of the internal audit function.

4. Each listed company must have an internal audit function.

See also additional general Commentary to §303A.07 discussing in greater detail the audit committee's responsibilities to review items relating to accounting principles, internal controls, off-balance sheet items, pro forma information, and other matters.

Executive Sessions. NYSE Listed Company Manual §303A.03 requires that non-management directors schedule regular executive sessions in which they meet without management.

Website Requirement. Each listed company must have an accessible website, which provides the company's compensation, nominating and audit committee charters, and its corporate governance guidelines and code of business conduct and ethics. See NYSE Listed Company Manual §303A.14.

2. NASDAQ Stock Market

Audit Committee Charter. NASDAQ Marketplace Rule 4350(d)(1) requires each issuer company to certify that it has a written audit committee charter and that the audit committee has annually reviewed and reassessed the adequacy of the charter.

The charter must specify:

- The scope of the audit committee's responsibilities, and how it carries out those responsibilities,
- The audit committee's responsibility to review, evaluate and oversee the outside auditor's independence, and receive from the outside auditor a written statement disclosing all relationships between the auditor and the company, in accord with Independence Standards Board Standard No. 1.
- The committee's purpose of overseeing the accounting and financial reporting processes, and audits of the financial statements of the company.
- The committee responsibilities and authority specified in NASDAQ Marketplace Rule 4350(d)(3).

Audit Committee Responsibilities and Authority. The audit committee must have and satisfy the specific audit committee responsibilities and authority necessary to comply with SEC Rule 10A-3(b) (2)-(5) of the Securities Exchange Act, relating to the outside auditor firm; complaints relating to accounting, internal accounting controls or auditing matters; authority to engage advisors; and funding. See NASDAQ Marketplace Rule 4350(d)(3).

Independent Directors and Executive Sessions. NASDAQ Marketplace Rule 4350(c)(1)-(2) requires that a majority of the the board of directors must be comprised of independent directors as defined in rule 4200, and that the independent directors must have regularly scheduled meetings at which only independent directors are present.

Conflicts of Interest. NASDAQ Marketplace Rule 4350(h) requires that each company conduct a review of all related party transactions for potential conflicts of interest on an ongoing basis. All such transactions must be approved by the audit committee or another independent body of the board of directors. See SEC Regulation S-K, Item 404 for the definition of the term "related party transaction."

Code of Conduct. NASDAQ Marketplace Rule 4350(n) requires that each listed company adopt a code of conduct applicable to all directors, officers and employees. The code must comply with the definition of a code of ethics set forth in Sarbanes-Oxley Act §406(c), and any SEC regulation.

3. American Stock Exchange

The American Stock Exchange maintains audit committee function and responsibility requirements. See American Stock Exchange Company Guide at §803.

V. DOCUMENTATION OF COMMITTEE MEETINGS AND ACTIVITIES

The audit committee should consider appropriately documenting committee meetings and actions for diligence and business judgment purposes, to aid with future actions and follow-up, to better avoid possible later confusion regarding actions taken and decisions made, and for the purpose of responding to potential outside auditor inquiries arising from Statement on Auditing Standards 109, 112 and 114, and Public Company Accounting Oversight Board Auditing Standard No. 5. The committee does need to consider which activities and discussions are sufficiently important to document. Although there should be reasonable concern that there could be an attempt by an outside entity to use the documentation as a road map to wrongdoing, a lack of documentation also could be viewed negatively, particularly if the standard of practice is to document activities. In a couple of high profile cases, courts have held that even investigation reports prepared through legal counsel can be discoverable in certain situations. Consideration also should be given to the U.S. Department of Justice so called McNulty Memorandum discussing federal prosecution of business organizations.

VI. THE AUDIT COMMITTEE CHARTER

The wording of the audit committee charter is significantly particular to each separate audit committee, board and company. Typical public company audit committee charters run three to six pages in length, depending on the degree of detail and the duties and responsibilities listed. At a minimum, for public companies the charter should cover the committee member qualifications and the committee functions and responsibilities required by securities statute, rule or regulation, and by the exchange on which the company's stock is listed. Although securities statute, rule and regulation requirements generally are the same for different public company audit committees, the specific NYSE and NASDAQ audit committee requirements are similar, but not identical. It is difficult to develop a generic charter, and, in any event, the charter really should be drafted specifically for the particular company. Thus, I have not included a sample boilerplate charter in these materials. However, relevant to this topic and as examples, the NASDAQ and NYSE audit committee charters are re-copied on the pages that follow this discussion.

The charter is helpful and desirable not only to satisfy legal requirements, but also to clarify for all interested persons the composition, duties and responsibilities of the audit committee, and thus, at least indirectly, the duties and responsibilities that are not expected. At least one caveat should be kept in mind: in various cases courts have looked at the charter document to determine the audit committee's duties and responsibilities, and to hold the audit committee to those representations. Audit committee members and their counsel need to give appropriate consideration to the charter to ensure that it meets

legal requirements, and that the committee members are certain that they understand and will undertake to satisfy the duties and responsibilities that are listed.

NASDAQ AUDIT COMMITTEE CHARTER

THE NASDAQ OMX GROUP, INC. (NASDAQ OMX) AUDIT COMMITTEE CHARTER , APPROVED APRIL 16, 2008

Organization

This Charter governs the operations of the NASDAQ OMX Group Audit Committee (the "Committee"). The Charter will be reviewed and reassessed, at least annually, by the Committee and will be approved by the Board of Directors. The Committee shall be appointed by the Board of Directors in compliance with Article IV, Section 4.13(g) of the NASDAQ OMX By-Laws and shall consist of four or five Directors, each of whom is independent of management. Members of the Committee shall be considered independent if, in the opinion of the Board of Directors, they have no relationship that may interfere with the exercise of their independence in carrying out the responsibilities of a director.* All Committee members will be able to read and understand fundamental financial statements, including a balance sheet, income statement, and cash flow statement. At least one member must have past employment experience in finance or accounting, requisite professional certification in accounting or any other comparable experience or background that results in the individual's financial sophistication, including service as a Chief Executive Officer, Chief Financial Officer, or other senior officer with financial oversight responsibilities or otherwise satisfy standards for financial expertise required for audit committees of companies listed on the NASDAQ Stock Market.

Statement of Policy

The primary function of the Audit Committee is to assist the Board of Directors in fulfilling its oversight responsibilities by reviewing the financial information, which will be provided to the shareholders and others, the systems of internal controls, which management and the Board of Directors have established, and the NASDAQ OMX Group's audit, financial reporting and the legal and compliance process. In so doing, it is the responsibility of the Committee to maintain free and open communication with independent auditors, internal auditors, and the NASDAQ OMX Group's management. In discharging its oversight role, the Committee is empowered to investigate any matter brought to its attention with full access to all books, records, facilities, and personnel of the NASDAQ OMX Group and the power to retain independent counsel, or other experts, and funding sufficient for this purpose.

Responsibilities and Processes

*Directors shall meet the standards for independence set forth in Section 10A(m) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), the rules promulgated by the Securities and Exchange Commission (the "SEC") and Nasdaq Stock Market Rule 4200(a), as amended. The composition and responsibilities of the Committee also will be consistent with SEC guidance, and in particular with the SEC Order set forth in Release No. 34-37538. Industry and Non-Industry Directors are not disqualified from serving on the Committee solely because they are employees or officers of a member firm or listed company as long as the Board of Directors determines that such Directors are independent of management according to the standards set forth above.

The primary responsibility of the Committee is to oversee the NASDAQ OMX Group's financial reporting process on behalf of the Board of Directors and report the results of these activities to the Board. Management is responsible for preparing the NASDAQ OMX Group's financial statements, and the independent auditors are responsible for auditing those financial statements. The Committee in carrying out its responsibilities believes its policies and procedures should remain flexible, in order to best react to changing conditions and circumstances. The Committee should take the appropriate actions to set the overall corporate policy for quality financial reporting, sound business risk management practices, and ethical behavior.

The following shall be the principal recurring processes of the Committee in carrying out its responsibilities. The processes are set forth as a guide with the understanding that the Committee may supplement them as appropriate. The responsibilities and processes of the Committee shall be consistent with the Exchange Act and the rules and regulations adopted by the SEC.

1. The Committee shall have a clear understanding with management and the independent auditors that the independent auditors are ultimately accountable to the Board and the Audit Committee, as representatives of the NASDAQ OMX Group's shareholders. The Committee shall have the ultimate authority and responsibility to select, evaluate and, where appropriate, replace the independent auditors (or to nominate the independent auditors to be proposed for shareholder ratification in any proxy statement).

2. The Committee is responsible for ensuring its receipt from the independent auditors at least annually of a formal written statement delineating all relationships between the auditor and the NASDAQ OMX Group, consistent with Independence Standards Board Standard 1. The Committee shall actively engage in dialogue with the independent auditors with respect to any disclosed relationships or services that may impact the objectivity and independence of the auditor and for taking, or recommending that the full board take, appropriate action to oversee the independence of the independent auditor. Additionally, the Committee shall review with the independent auditors any audit problems or difficulties and management responsiveness. The Committee shall prescribe what services are allowable by the independent auditors and approve in advance all services provided by the auditors (see Independent Public Auditor Services section). The Committee shall review all proposed NASDAQ OMX Group hires formerly employed by the independent auditors.

3. The Committee shall discuss with the internal auditors and the independent auditors the overall scope and plans for their respective audits including the adequacy of staffing, compensation, and resources. Also, the Committee shall discuss with management, the internal auditors, and the independent auditors the adequacy and effectiveness of the NASDAQ OMX Group's internal controls, including systems to monitor and manage business risk, and legal and ethical compliance programs and financial reporting. Further, the Committee shall meet separately with the internal auditors and the independent auditors, with and without management present, to discuss the results of their examinations. The internal auditors shall report directly to the Committee and have free and open access to information deemed necessary by them to perform their assessments. The Committee shall provide oversight over the system of internal controls, relying upon management's and the internal and independent auditor's representations and assessments of the controls.

4. The Committee shall review the interim financial statements and earnings releases with management and the independent auditors prior to the filing of the NASDAQ OMX Group's quarterly report on Form 10-Q. Also, the Committee shall discuss the results of the quarterly review and any other matters required to be communicated to the Committee by the independent auditors under generally accepted auditing standards.

5. The Committee shall review with management and the independent auditors the financial statements to be included in the NASDAQ OMX Group's annual report on Form 10-K (or the annual report to shareholders if distributed prior to the filing of Form 10-K) and quarterly reports on Form-Q, including MD&A disclosures, their judgment about the quality, not just acceptability, of accounting principles, the reasonableness of significant judgments, and the clarity of the disclosures in the financial statements. Also, the Committee shall discuss the results of the annual audit, including the management letters, reports and attestations prepared by management and the independent auditors to comply with the Exchange Act and any other matters required to be communicated to the Committee by the independent auditors under generally accepted auditing standards and SEC rules.

6. The Committee shall review and approve all related party transactions consistent with the rules applied to companies listed on the NASDAQ Stock Market.

7. The Committee shall have responsibility for, and oversight of, a confidential and anonymous process and procedures for the receipt, retention and treatment of submissions regarding accounting, internal accounting controls or audit matters. All such relevant submissions must be reported to the Committee.

8. The Committee shall oversee the adequacy and effectiveness of the regulatory and self-regulatory organization responsibilities of the NASDAQ OMX Group and its subsidiaries; assess regulatory performance; and assist the Board and other committees of the Board in reviewing the regulatory plan and the overall effectiveness of regulatory functions.

9. An annual performance appraisal of the Audit Committee.

Independent Public Auditor Services

The independent auditor is prohibited from performing any of the following services for the NASDAQ OMX Group:

- bookkeeping or other services related to the accounting records or financial statements of the audit client;
- financial information systems design and implementation;
- appraisal or valuation services, fairness opinions, or contribution-in-kind reports;
- actuarial services;
- internal audit outsourcing services;

- management or human resources functions;
- broker or dealer, investment adviser, or investment banking services;
- legal services and expert services unrelated to the audit; and
- any other service that the Public Company Accounting Oversight Board determines, by regulation, is impermissible.

All audit and allowable non-audit services must be approved in advance by the Committee. However, the Chairman of the Committee is delegated authority to approve in advance non-audit services by the independent auditor to support business development, consulting on accounting issues (subject to the prohibitions above) or tax consulting to the extent permitted by SEC rules, if such non-audit services do not exceed \$300,000 in the aggregate between meetings of the Committee and the Committee is informed of such pre-approval by the Chairman at the Committee's next meeting.

NYSE AUDIT COMMITTEE CHARTER

NYSE EURONEXT AUDIT COMMITTEE CHARTER

Adopted January 31, 2008

Purpose

The Audit Committee ("Committee") is appointed by the Board of Directors ("Board") of NYSE Euronext ("Company") and charged with assisting the Board in its oversight of: (a) the integrity of the Company's financial statements and internal controls, (b) compliance with legal and regulatory requirements, including the Company's ethical standards and policies, (c) the qualifications, independence and performance of the Company's independent auditor, (d) the process relating to internal risk management and control systems, (e) the performance of the Company's internal audit function and its independent auditors, and (f) the Company's tax policy; and preparing the Audit Committee report to shareholders for inclusion in the Company's annual proxy statement.

Membership

The Committee will consist of no fewer than three members. All of the Committee members will meet the independence and experience requirements of the New York Stock Exchange and Rule 10A-3 under the Securities Exchange Act of 1934.

Each member of the Committee will be financially literate, as such qualification is interpreted by the Board in its business judgment, or become financially literate within a reasonable time after

appointment to the Committee. At least one member of the Committee will have accounting or related financial management expertise, as such qualification is interpreted by the Board in its business judgment. The designation or determination by the Board of a person as an Audit Committee financial expert will not impose on such person individually, on the Committee, or on the Board as a whole, any greater duties, obligations or liability than would exist in the absence of such designation or determination.

The members, including the Chairman, will be appointed by the Board upon the recommendation of the Nominating and Governance Committee. Audit Committee members may be removed by the Board in its complete discretion.

Organization

The Committee will meet at least four times during each Board year, or more frequently as it deems necessary to carry out its responsibilities. Meetings of the Committee may be called by the Chairman or a majority of the members of the Committee. A majority of the Committee members will constitute a quorum, except as may be otherwise required by law or the Company's Certificate of Incorporation or Bylaws. The act of a majority of the Committee members present at any meeting at which a quorum is present will be the act of the Committee.

The Committee will regularly meet privately in separate sessions with senior management, the independent auditor, and the senior internal audit executive and will meet in executive session as necessary or appropriate. The Board authorizes the Committee to request information from the Chief Executive Officer, the Deputy Chief Executive Officer or any officer or employee of the

Company or its outside legal counsel or independent auditors or to request that any such persons attend a meeting of the Committee or to meet with any members of, or consultants to, the Committee. In discharging its responsibilities, the Audit Committee will have the resources and authority to cover ordinary administrative costs and to engage any registered public accounting firm, independent counsel and other advisors or professionals it deems appropriate at the expense of the Company; it will inform the Chairman of the Board in advance.

The Committee will regularly report to the Board, and will report each year with respect to the activities of the Committee and compliance with this charter. It will reassess the adequacy of this charter annually and may propose changes to the Board for approval.

The Committee will annually review its own performance and report the results to the Board.

While the Committee has the responsibilities and powers set forth in this charter, the role of the Committee is assisting the Board in its oversight responsibilities. It is not the duty of the Committee to plan or conduct audits or to determine that the Company's financial statements and disclosures are complete and accurate and in accordance with U.S. generally accepted accounting principles ("U.S. GAAP") or international financial reporting standards ("IFRS") and applicable rules and regulations. Likewise, it is not the Committee's responsibility to conduct investigations, or to assure that the Company complies with specific legal requirements or the Company's code of ethics. Each member of the Committee will be entitled to rely, to the fullest extent permitted by law, upon the integrity of those persons or organizations within and outside the Company from whom it receives information, and the

accuracy of the information.

Duties and Responsibilities

The primary responsibilities of the Committee are set forth below. The Committee will:

A. Oversight of Independent Auditors

1. Require the independent auditor to report directly to the Committee. Appoint, oversee the work of, evaluate the qualifications, performance and independence of, determine compensation for, and where appropriate, terminate, replace, or rotate, the independent auditor. In evaluating the performance of the independent auditor, the Committee will evaluate the performance of the independent auditor's lead partner and will consider whether the provision of non-audit services is compatible with maintaining the auditor's independence, and ensure the rotation of audit partners as required by law. The Committee will present its conclusions with respect to the independent auditor to the Board.
2. Review and pre-approve, to the extent required by applicable laws and regulations, the scope and general extent of the independent auditor's services, audit and non-audit, the significant audit procedures that will be used, and the estimated fees for its audit services. The Chairman of the Committee may grant any required pre-approval of specific services as required, provided that the full Committee is advised of such approval at the next regularly scheduled Committee meeting.
3. Obtain and review a report by the independent auditor, at least annually, regarding: (a) the independent auditor's quality control procedures, (b) any material issues raised by the most recent internal quality control or peer review, or by any inquiry or investigation by governmental or professional authorities within the preceding five years respecting an independent audit conducted by the firm, (c) any step taken to address such issues, and (d) all relationships between the independent auditor and the Company. Discuss with the independent auditor whether any disclosed relationships or services may impact the objectivity and independence of the independent auditor and make appropriate recommendations to the Board concerning such matters.
4. Obtain and review a report by the independent auditor, at least annually, containing: (a) the auditor's conclusions regarding the Company's critical accounting principles and the application of those principles, (b) all alternative treatments of financial information within GAAP (or IFRS, as applicable) that have been discussed with management and the ramifications of the use of such alternative treatments, (c) the critical accounting principles preferred by the independent auditor, and (d) other matters required to be discussed with the independent auditor by applicable laws and regulations.
5. Set clear policies for the Company's hiring of employees or former employees of the independent auditor.
6. Review with the independent auditor any problems or difficulties in auditing the Company's financial statements and management's responses. The Committee will make efforts to resolve any disagreements between management and the independent auditor regarding financial reporting.
7. Facilitate open communications among the Company's independent auditor, management, the

internal audit division and the Board.

B. Oversight of Internal Auditors

1. Establish a direct line of communication with the senior internal audit executive. Review the findings of significant reports to management made by the internal audit division and management's responses. Review and approve internal audit plans and recommended changes to the plans, including as such plans relate to the structure, qualification and activities of the internal audit function and the scope of internal audit responsibilities in relation to the independent auditor's duties. Assess the effectiveness of the internal audit function at least once a year.
2. Recommend for Board approval the appointment and replacement of the senior internal audit executive, and all matters related to responsibilities, budget and staffing of the internal audit division.

C. Financial Statement and Disclosure Matters

1. Meet to review and discuss with management and the independent auditor the annual audited financial statements, including disclosures made in management's discussion and analysis, and recommend to the Board whether the audited financial statements should be included in the Company's Form 10-K to be filed with the SEC.
2. Meet to review and discuss with management and the independent auditor the Company's quarterly financial statements including disclosures made in management's discussion and analysis prior to the filing of its Form 10-Q, release of earnings information, including the results of the independent auditor's review of the quarterly financial statements.
3. Review with management and the independent auditor significant financial reporting issues and judgments made in connection with the preparation of the Company's financial statements, including the Company's critical accounting principles and any significant changes to those principles or their application, the effect of off-balance sheet structures on the Company's financial statements, and material or non-financial arrangements that do not appear in the Company's financial statements. Discuss the effect of regulatory and accounting initiatives on the Company's financial statements.
4. Review with management and the independent auditor any major issues as to the adequacy of the Company's internal controls, any special steps adopted in light of material control deficiencies and the adequacy of disclosures about changes in internal control over financial reporting.
5. Review with management and the independent auditor the Company's internal controls report and the independent auditor's attestation of the report prior to the filing of the Company's Form 10-K.
6. Prepare the Audit Committee report to shareholders for inclusion in the Company's annual proxy statement.
7. Review disclosures made by the Company's CEO and CFO during their certification process for the Form 10-K and Form 10-Q about the results of their evaluation of the effectiveness of disclosure controls and any significant deficiencies in the design or operation of internal controls or material

weaknesses, and any fraud involving management or other employees who have a significant role in the Company's internal controls.

8. Discuss the Company's earnings press releases, including the use of "pro forma" or "adjusted" non-U.S. GAAP or non-IFRS information (as applicable), as well as financial information and earnings guidance provided to analysts and rating agencies.

9. Review the preparation of any financial statements or reports, reports on internal controls, information relating to statutory auditors and the like, to be provided to the Autorité des Marchés Financiers ("AMF") or any other relevant regulatory authority.

D. Corporate Oversight

1. Discuss the Company's major financial and other significant risk exposures or deficiencies, and the steps management has taken to monitor and control or mitigate such exposures and deficiencies. Discuss the Company's risk assessment and risk management policies.

2. Periodically assess whether the Company has implemented the appropriate internal risk management and internal control culture.

3. Review reports of credit rating agencies.

4. Review and make a recommendation to the Board on the Company's annual budget.

5. Review and recommend for Board approval the Code of Ethics and Business Conduct and any other appropriate codes of conduct or compliance policies. Review annually the implementation and effectiveness of the ethics and compliance program, and any significant deviations by officers and employees from the Code of Ethics and Business Conduct or other ethics and compliance policies.

6. Establish "whistleblowing" procedures, i.e., procedures for the receipt, retention and treatment of complaints received by the Company regarding accounting, internal accounting controls, or auditing matters, and the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters. Review any such significant complaints or concerns.

7. Review periodically, but not less than annually, the Company's insurance programs, tax policy and investment performance.

8. Review periodically with the head of security the physical and personnel security programs in place for the Company.

9. Review with the General Counsel and others, as appropriate and at least annually, legal matters that may have a material impact on the Company's financial statements and any material reports or inquiries received from regulators or governmental agencies.

10. Direct and oversee, as appropriate, investigations into any matter brought to its attention within the scope of its duties.

11. Establish procedures for the receipt and treatment of the periodic financial reporting of the Company's subsidiaries and reporting of the Audit Committees of the subsidiaries.

12. Assess periodically and at least annually the Company and its subsidiaries' compliance with any regulatory financial commitments.

The Committee's charter will be published on the Company's website.

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