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Stock Exchange Corporate Governance Standards Guide – 2024

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PUBLIC COMPANY GATEWAY

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I. Corporate Governance Standards

A. WHAT ARE CORPORATE GOVERNANCE STANDARDS AND DO THEY APPLY TO YOU?

Corporate governance standards are designed to guide the management and oversight of companies. While applicable to both private and public companies, this handbook focuses on public companies, particularly those listed on Nasdaq and the New York Stock Exchange (NYSE). This handbook also references rules and guidelines that apply to these companies as a result of regulations promulgated by the Securities and Exchange Commission (SEC).

The NYSE and Nasdaq, the two largest U.S. securities exchanges, have each implemented their own corporate governance requirements. Listed companies that do not comply with these corporate governance requirements may be subject to losing their listing status, restrictions on issuances, and other impediments to accessing the public markets.

B. KEY SOURCES OF CORPORATE GOVERNANCE STANDARDS

Federal Law: Public companies are subject to federal regulations such as the Sarbanes-Oxley Act of 2002 (SOX) and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), both of which regulate board structure, executive compensation, and audit committee composition.

Stock Exchanges: Public companies must also follow corporate governance rules set by stock exchanges like the NYSE and Nasdaq, including requirements for board independence, audit committees, and disclosures.

State Law: Every company must comply with the corporate laws of the state of its incorporation. These laws regulate core aspects of a company's operations, including director fiduciary duties and shareholder voting rights.

Institutional Investors: Large shareholders often push companies to adopt best practices beyond the minimum legal or exchange requirements, such as implementing majority voting standards and separating the CEO and chairman roles.

II. Board of Directors Requirements

	NASDAQ	NYSE	OTHER
INDEPENDENCE	<p>A majority of board members must be independent.</p> <p>Nasdaq defines independent directors in Rule 5605(a)(2).</p>	<p>A majority of board members must be independent.</p> <p>The NYSE defines independent directors in Section 303A.02.</p>	<p>The SEC requires each company to disclose:</p> <p>Names of directors the board considers independent, per exchange rules and company-specific standards;</p> <p>Any additional independence criteria followed; and</p> <p>Transactions, relationships, and factors the board assessed in determining independence.</p>
THIRD-PARTY COMPENSATION OF DIRECTORS	<p>Nasdaq requires companies to disclose certain compensation and other payments made by third parties to their directors or director nominees.</p>	<p>The NYSE has no such requirement.</p>	
MEETINGS OF INDEPENDENT DIRECTORS	<p>Nasdaq mandates that independent directors hold at least two regularly scheduled "executive sessions" each year, where they meet without management or other board members present.</p>	<p>The NYSE requires companies to choose one of two governance practices: 1. non-management directors must hold regularly scheduled executive sessions without management present, or 2. Only independent directors are required to hold regularly scheduled executive sessions. Additionally, companies must establish a method for interested parties to communicate directly with non-management or independent directors.</p>	

DIVERSITY**NASDAQ**

Nasdaq-listed companies must now have at least two diverse directors, one of whom is female and the other of whom is an underrepresented minority or LGBTQ+, or explain why they do not, subject to exceptions for smaller reporting companies, foreign issuers and companies with small boards.

NYSE

NYSE does not have a diversity disclosure requirement, however it established the NYSE Board Services Program in 2019 to address the need for diverse, inclusive leadership on corporate boards.

OTHER**FPI EXCEPTIONS**

Nasdaq allows FPIs to follow home country practices instead of requiring a majority of independent directors. FPIs must meet board diversity goals and disclosure requirements, though with more flexibility than domestic US companies. To meet diversity objectives, an FPI must have either two female directors or one female director and one director identifying as LGBTQ+ or from an underrepresented group in the country where the company's main offices are located. FPIs can also follow home country practices instead of third-party compensation disclosure rules.

The NYSE allows FPIs to follow their home country practice instead of requiring a majority of independent directors.

III. Committee Requirements

AUDIT COMMITTEE REQUIREMENTS

	NASDAQ	NYSE	SEC
COMMITTEE REQUIREMENT	Yes, an audit committee is required.	Yes, an audit committee is required.	
DIRECTOR REQUIREMENTS	<p>Nasdaq requires at least three independent directors on the audit committee, each of whom:</p> <ul style="list-style-type: none"> • Meets the exchange's general independence requirements for all directors • Meets the SEC's enhanced independence standards for audit committee members pursuant to Rule 10A-3 under the Exchange Act • Can read and understand fundamental financial statements • Did not participate in preparing the company's financial statements at any time in the past three years. <p>At least one member of the audit committee must have prior experience that makes them financially sophisticated.</p>	<p>The NYSE requires at least three independent directors on the audit committee, each of whom:</p> <ul style="list-style-type: none"> • Meets the exchange's general independence requirements for all directors • Meets the SEC's enhanced independence standards for audit committee members pursuant to Rule 10A-3 under the Exchange Act • Is financially literate <p>At least one member of the audit committee must have accounting or related financial management expertise.</p>	<p>The SEC mandates that companies disclose in their Form 10-K or proxy statement whether they have at least one audit committee financial expert. If no such expert is present, the company must explain why.</p>
EXCEPTION TO THE INDEPENDENT DIRECTOR REQUIREMENT	A Nasdaq-listed company may have one member on its audit committee who does not meet all of Nasdaq's independence requirements under exceptional circumstances if	The NYSE does not have an exception.	

NASDAQ**NYSE****SEC**

the following conditions are met:

Temporary Appointment:

The non-independent member can be appointed to the audit committee for a limited period, generally not exceeding two years, to address these exceptional circumstances.

Public Disclosure: The company must publicly disclose in its next proxy statement (or Form 10-K if the company does not file a proxy statement) the nature of the relationship precluding independence and the reasons for the board's determination.

Majority Independence:

Despite the exception, the audit committee must still be comprised of a majority of independent directors.

WRITTEN CHARTER REQUIREMENTS

The audit committee must have a written charter outlining its purpose, duties, and responsibilities, which include:

Appointing, retaining, compensating, and overseeing the company's auditors.

Reviewing the company's financial statements with management and auditors.

Establishing procedures for handling complaints related to accounting or auditing, including confidential, anonymous submissions by employees.

Setting policies for the pre-approval of all audit and non-audit services by the

The audit committee must have a written charter outlining its purpose, duties, and responsibilities, which include:

Appointing, retaining, compensating, and overseeing the company's auditors.

Reviewing the company's financial statements with management and auditors.

Establishing procedures for handling complaints related to accounting or auditing, including confidential, anonymous submissions by employees.

The SEC requires companies to disclose information about its audit committee, as outlined in its written charter, in its Form 10-K and proxy statement.

	NASDAQ	NYSE	SEC
	<p>auditors, with related policies disclosed in the proxy statement.</p> <p>Preparing the required audit committee report for the proxy statement.</p> <p>Having the authority and funding to hire independent counsel and outside advisors.</p>	<p>Setting policies for the pre-approval of all audit and non-audit services by the auditors, with related policies disclosed in the proxy statement.</p> <p>Preparing the required audit committee report for the proxy statement.</p> <p>Having the authority and funding to hire independent counsel and outside advisors.</p>	
RELATED PARTY TRANSACTIONS	<p>Nasdaq mandates that the audit committee or another independent board committee regularly review transactions between the company and related parties (such as directors, executive officers, 5% stockholders, or their family members) to identify potential conflicts of interest. This review is required but does not need to include approval and can occur after the transaction has taken place.</p> <p>Nasdaq allows FPIs to follow home country practice instead of this requirement.</p>	<p>The NYSE requires the audit committee or another independent board committee to review, evaluate, and oversee related party transactions. The committee must conduct a reasonable prior review and block any transaction that is inconsistent with the company's and stockholders' interests. For ongoing related party transactions, the committee is expected to continuously evaluate and determine whether these transactions should continue.</p> <p>The NYSE does not provide an exemption for FPIs.</p>	
FPI EXCEPTIONS	<p>FPIs must comply with the SEC's Rule 10A-3 regarding audit committee oversight but can otherwise rely on their home country practices for audit committees, as long as certain core requirements of 10A-3 are met.</p>	<p>FPIs must have an audit committee that satisfies the SEC's Rule 10A-3 but otherwise can follow its home country practice instead of the exchange rules related to the audit committee.</p>	
OTHER			<p>The SEC requires reporting companies to disclose information</p>

	NASDAQ	NYSE	SEC
			<p>about the audit committee, including:</p> <p>The members of the committee.</p> <p>A description of the committee's charter.</p> <p>A report of the audit committee's oversight of financial reporting and the external auditor.</p> <p>Disclosure of the audit committee's approval of non-audit services provided by the auditor.</p> <p>Any relevant information about the audit committee's independence and whether there are any conflicts of interest, and how those are addressed.</p>

COMPENSATION COMMITTEE

	NASDAQ	NYSE	OTHER
COMMITTEE REQUIREMENT	Yes, a compensation committee is required.	Yes, a compensation committee is required.	
DIRECTOR REQUIREMENTS	<p>Compensation committee must be comprised of at least two independent directors, each of whom:</p> <ul style="list-style-type: none"> • Meets the exchange's general independence requirements for all directors. • Is evaluated under an enhanced independence review for compensation committee members, including the sources 	<p>Compensation committee must be comprised of independent directors, each of whom:</p> <ul style="list-style-type: none"> • Meets the exchange's general independence requirements for all directors. • Is evaluated under an enhanced independence review for compensation committee members, 	

NASDAQ

of their compensation and any affiliations between the director and the company.

NYSE

including the sources of their compensation and any affiliations between the director and the company.

OTHER**CHARTER REQUIREMENTS**

The compensation committee's written charter must include the following responsibilities:

Determining (or recommending) CEO compensation.
 Reviewing and approving CEO compensation goals and evaluating performance.
 Ensuring the CEO is not present during deliberations or voting on their compensation.
 Retaining and overseeing compensation consultants, legal counsel, and advisors.
 Ensuring company funding for these consultants and advisors.
 Evaluating the independence of consultants, legal counsel (excluding in-house), and advisors.

The compensation committee's written charter must include the following responsibilities:

Determining (or recommending) CEO compensation.
 Reviewing and approving CEO compensation goals and evaluating performance.
 Determining or recommending compensation for other executives and board-approved incentive/equity plans.
 Retaining and overseeing compensation consultants, legal counsel, and advisors.
 Ensuring company funding for these consultants and advisors.
 Evaluating the independence of compensation consultants, legal counsel (excluding in-house), and advisors.

EXCEPTION TO THE INDEPENDENT DIRECTOR REQUIREMENT

Nasdaq allows one member to be non-independent under specific circumstances, with appropriate disclosure under Rule 5605(d)(2)(B).

NYSE does not have an exception.

OTHER

The SEC requires reporting companies to disclose information about the compensation committee, including:

NASDAQ**NYSE****OTHER**

			<p>The members of the committee.</p> <p>A description of the committee's charter.</p> <p>A description of the executive compensation process.</p> <p>A discussion of compensation policies and practices that may cause material risks to the company.</p> <p>Disclosure of fees paid to compensation consultants for services in addition to advice or recommendations on the amount or form of executive or director compensation under certain circumstances.</p> <p>Information about any conflicts of interest of compensation consultants, if applicable, including the nature of the conflict and how it is being addressed.</p>
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FPI EXCEPTIONS

Nasdaq allows FPIs to follow their home country practice instead of Nasdaq's exchange rules related to the compensation committee.

The NYSE allows FPIs to follow their home country practice instead of the NYSE's rules related to the compensation committee.

If an FPI does not have an independent compensation committee, Nasdaq mandates that the company must provide an explanation in its annual SEC report for the absence of such a committee.

NOMINATING/CORPORATE GOVERNANCE COMMITTEE

	NASDAQ	NYSE	OTHER
COMMITTEE REQUIREMENT	A nominating / corporate governance committee is not required. Either the company has a nominations committee or certain decisions regarding director candidates must be made by a group consisting of a majority of the independent directors on the board.	Yes, a nominating / corporate governance committee is required.	
DIRECTOR REQUIREMENTS	<p>If the company has a nominating / corporate governance committee, the committee must be composed entirely of independent directors, each of whom:</p> <ul style="list-style-type: none"> Meets the exchange's general independence requirements for all directors. <p>The nominating / corporate governance committee may include one non-independent director only under exceptional and limited circumstances.</p>	Requires listed companies to have a nominating/corporate governance committee comprised entirely of independent directors that is responsible for director nominations as well as developing and overseeing the corporate governance policies of the company.	
CHARTER REQUIREMENTS	Nasdaq mandates that companies must either adopt a written charter for an independent nominating committee or establish formal board resolutions if nominating decisions are made by a majority of independent directors. These documents should outline the company's nominating process.	Requires the nominating/corporate governance committee to have a written charter that establishes the committee's purpose, duties and responsibilities, including: <ul style="list-style-type: none"> Identification of people qualified to become company directors. Selection of director nominees. 	

	NASDAQ	NYSE	OTHER
		<ul style="list-style-type: none"> Development of the company's corporate governance guidelines. 	
OTHER			<p>The SEC requires a reporting company to disclose its process for nominating directors, including:</p> <p>Whether the company has a nominating committee, if not, why not, and whether the committee has a charter.</p> <p>The committee's process to identify and select director nominees and any minimum qualifications for directors.</p> <p>Whether the company will consider director candidates recommended by stockholders, and if so, how stockholders can recommend candidates.</p> <p>Whether and how the company considers diversity as a factor in identifying nominees for director.</p> <p>A description of the specific skills, qualifications and skills of each director and director nominee that caused the committee and/or the board to determine that each such person should be a director.</p>
FPI EXCEPTIONS	Nasdaq allows FPIs to follow their home country practice instead of Nasdaq's exchange rules related to the nominating	The NYSE allows FPIs to follow their home country practice instead of the NYSE's rules related to the	

NASDAQ	NYSE	OTHER
and corporate governance committee.	nominating and corporate governance committee.	

IV. Foreign Private Issuers

The NYSE and Nasdaq allow Foreign Private Issuers (FPIs) more leeway and allow them to follow home country practice instead of the exchange's corporate governance requirements in certain respects.

Definition of FPI: A company qualifies as an FPI pursuant to Rule 3b-4 of the Exchange Act if it is incorporated outside the U.S., is not a foreign government, and meets additional criteria: (a) it must not have a majority of executive officers or directors who are U.S. citizens or residents, nor more than 50% of its assets located in the U.S.; (b) it must not conduct its principal business administration in the U.S.; and (c) 50% or less of its voting securities must be held by U.S. residents. If more than 50% of its voting securities are held by U.S. residents, the company may still qualify if it meets the U.S. business contacts tests.

TRANSITION PERIOD FOR NON-COMPLIANCE

- **NYSE Requirements:** If a company ceases to qualify as an FPI:
 - **Six-Month Transition:** The company has six months to comply with most corporate governance requirements, including those related to board independence and committee composition.
 - **Immediate Compliance:** The company must immediately comply with shareholder approval requirements for equity compensation plans, with a limited transition period for preexisting plans.
- **Nasdaq Requirements:**
 - **Six-Month Transition:** Provides a six-month period for compliance with board independence, board committee requirements, and executive sessions.
 - **One-Year Transition:** Offers at least one year to meet board diversity requirements applicable to US companies.

HOME COUNTRY PRACTICE

- **Exemption:** FPIs can follow their home country laws and practices in certain respects instead of the NYSE and Nasdaq corporate governance requirements.
- **Certification Requirement:** To follow home country practices:
 - **Certification:** FPIs must submit a written certification from independent counsel in their home country to the SEC at the time of its initial registration statement or when it files its annual report on Form 20-F. This certification must confirm that the company's practices are not prohibited by the laws of the home country.

DISCLOSURE REQUIREMENTS

	NASDAQ	NYSE
PUBLIC DISCLOSURE IF FPI ELECTS TO FOLLOW HOME COUNTRY PRACTICE	Requires FPIs to disclose in their annual SEC reports any Nasdaq requirements it does not follow, along with a description of the home country practices it adheres to instead. If an FPI is not required to file an annual report on Form 20-F, this disclosure may be made solely on its website. Specifically, if an FPI opts for a home country practice over the requirement for an independent compensation committee, it must explain the absence of such a committee in its SEC annual report. For FPIs making their initial public offering or first US listing on Nasdaq, they must disclose in their registration statement or on their website which Nasdaq requirements they do not follow and describe the alternative home country practices.	Requires FPIs listed on the exchange to disclose any significant differences between their corporate governance practices and those required for US companies under NYSE standards. This disclosure should be a brief summary of the differences. If an FPI files an annual report on Form 20-F, it must include this information in that report. Alternatively, the disclosure can be made either in the annual SEC report or on the company's website. If the disclosure is made on the website, the company must mention this fact in its annual SEC report and provide the website address.

V. Additional Requirements

Exemption from Board and Board Committee Standards for Controlled Companies

Under NYSE and Nasdaq rules, companies classified as "controlled companies"—those with more than 50% of voting power held by a single entity—are exempt from certain corporate governance requirements. These exemptions include the need for a majority of independent directors on the board and the establishment of independent compensation and nominating committees. However, controlled companies must still adhere to other governance standards, such as those related to the audit committee and special meetings of independent directors.

To utilize this exemption, a controlled company must disclose its reliance on the exemption in its proxy statement or Form 10-K, as required by Item 407(a) of Regulation S-K. This disclosure should include an explanation of the company's status as a controlled company and a statement on which corporate governance requirements it is not complying with. Despite qualifying for these exemptions, some controlled companies may still choose to adhere to certain governance standards voluntarily, such as maintaining a majority of independent directors or independent committees.

Corporate Governance Guidelines

The NYSE requires companies to adopt and disclose corporate governance guidelines that address:

- **Director Qualification Standards:**
 - Companies must adopt standards that align with the independence criteria outlined in Sections 303A.01 and 303A.02. These standards may also include additional policies,

such as limitations on the number of boards on which a director may serve and rules regarding director tenure, retirement, and succession.

- **Director Responsibilities:**
 - Guidelines should outline expectations for directors, including regular attendance at board meetings and advance review of meeting materials. They must also ensure that directors have appropriate access to management and, if necessary, independent advisors.
- **Director Compensation:**
 - The guidelines should establish general principles for determining the form and amount of director compensation.
- **Director Orientation and Education:**
 - Companies must implement orientation programs and provide ongoing education for directors to enhance their effectiveness.
- **Management Succession:**
 - Companies should have clear policies for selecting the CEO, conducting performance reviews, and managing succession in the event of an emergency or retirement.
- **Board Performance:**
 - The board is required to conduct an annual self-evaluation to assess its performance.
- **Disclosure:**
 - The corporate governance guidelines must be posted on the company’s website. Additionally, the company must disclose in its proxy statement or Form 10-K that these guidelines are available online, including the website address.

Nasdaq does not have a corporate governance guideline requirement.

CODE OF CONDUCT/ BUSINESS CONDUCT AND ETHICS

	NASDAQ	NYSE	OTHER
DISCLOSURE REQUIREMENTS	Nasdaq requires each listed company to adopt a code of conduct that applies to all of its directors, officers and employees. The code of conduct should provide a practical set of business, compliance and ethical standards for the participants.	NYSE requires each listed company to adopt a code of business conduct and ethics that applies to all of its directors, officers and employees. The code of conduct should provide a practical set of business, compliance and ethical standards for the participants.	Under Item 406 of Regulation S-K, the SEC mandates that companies disclose whether they have adopted a code of ethics for key executives, including the principal executive officer, principal financial officer, and principal accounting officer. If a company has not adopted such a code, it must publicly explain why. The code should outline written standards aimed at preventing misconduct.
SUBSTANCE REQUIREMENTS	Nasdaq requires that a code of conduct meet SEC standards and include a	The NYSE code of business conduct and	

NASDAQ

mechanism for enforcement.

NYSE

ethics should address the following:

- Conflicts of interest.
- Corporate opportunities.
- Confidentiality.
- Fair dealing.
- Proper use and protection of company assets.
- Compliance with laws, rules and regulations, including insider trading laws.
- Reporting of any illegal or unethical behavior, including any violations of the code.

OTHER

WAIVER OF THE CODE

If the board of directors or a board committee approves a waiver of the code for a director or executive officer, the waiver and the reasons for the waiver must be disclosed within four business days by filing a Form 8-K (for foreign private issuers, a Form 6-K), in a press release or on the company's website (Rule 5610 and IM-5610).

If the board of directors or a board committee grants a waiver of the code for an executive officer or director, the waiver must be disclosed to stockholders within four business days in a press release, on the company's website or by filing a Form 8-K (Section 303A.10).

FPI EXCEPTIONS

Nasdaq allows FPIs to follow their home country practice instead of the code of ethics or conduct requirement.

The NYSE allows FPIs to follow their home country practice instead of the code of ethics or conduct requirement.

If an FPI lacks a code of ethics for its principal executive officer, principal financial officer, principal accounting officer, controller, or individuals in similar roles, Form 20-F mandates an explanation for the absence of such a code.

Companies can choose to have separate codes for different types of officers and personnel, or combine SEC and exchange requirements into a single code. In practice, many companies integrate these requirements into one comprehensive code that covers all officers, directors, and employees.

STOCKHOLDER APPROVAL REQUIREMENTS

The NYSE and Nasdaq mandate stockholder approval for all equity compensation plans or arrangements, including any material revisions, regardless of director or officer participation. Exceptions to this requirement include:

- 401(k) and similar tax-qualified plans.
- Dividend reinvestment plans.
- Awards given as inducements for new hires.
- Awards related to mergers and acquisitions.

Additionally, stockholder approval is generally required for:

- Issuances of common stock that could equal or exceed 20% of the pre-issuance outstanding stock, unless in a public offering or at a price above market value.
- Issuances of securities that could result in a change of control.

Further, the NYSE requires approval for any issuance exceeding 1% of the pre-issuance outstanding stock to directors, officers, substantial stockholders, or their affiliates. Nasdaq requires approval for acquisitions resulting in the issuance of over 20% of outstanding stock, or over 5% if a director, executive officer, or 5% stockholder holds 5% of the entity being acquired.

Nasdaq permits FPIs to adhere to their home country practices rather than the Nasdaq shareholder approval requirements. Similarly, the NYSE allows FPIs to follow home country practices for equity compensation plan approvals, though it does not explicitly exempt them from other shareholder approval requirements. In practice, however, the NYSE typically does not enforce the specified issuance limits for FPIs and can confirm this position upon request.

OFFICER CERTIFICATIONS

	NASDAQ	NYSE
NOTIFICATION REQUIREMENTS	Nasdaq only requires the CEO to promptly inform Nasdaq if any executive officer becomes aware of non-compliance with its corporate governance standards.	The NYSE mandates that the CEO annually certify that they are not aware of any violations of the NYSE's corporate governance standards. Additionally, the CEO must promptly notify the NYSE in writing if any executive officer becomes aware of non-compliance with these standards.

	NASDAQ	NYSE
FPI EXCEPTIONS		<p>The NYSE allows FPIs to follow their home country practice instead of the CEO certification requirement. The NYSE also mandates that listed companies, including FPIs, submit a written affirmation of compliance with corporate governance rules annually and as required. While FPIs must also provide this affirmation, their affirmation form typically covers fewer items compared to the form used by other listed companies.</p>

CLAWBACK POLICY COMPLIANCE

Under both NYSE and Nasdaq rules, companies must implement and adhere to a written policy that mandates the recovery of incentive-based compensation awarded to current and former executive officers if an accounting restatement is required due to material noncompliance with financial reporting requirements under securities laws. This includes:

- **“Big R” Restatements:** Correcting an error in previously issued financial statements that is material to those statements.
- **“Little r” Restatements:** Correcting an error that isn't material to previous statements but would cause a material misstatement if left uncorrected or recognized in the current period.

Additionally, the company must comply with federal disclosure requirements regarding its clawback policy and file the policy as an exhibit to its annual report.