NASDAQ AND AMEX TAKE ACTIONS ON CORPORATE GOVERNANCE REFORM

On July 25, 2002, each of the Nasdaq Stock Market, Inc. ("Nasdaq") and the American Stock Exchange ("AMEX") announced that their governing boards had approved new corporate governance reform proposals.

Nasdaq's proposals are intended to increase accountability and transparency for the benefit of investors. Pending approval by the National Association of Securities Dealers, the reform proposals will be forwarded to the Securities and Exchange Commission (the "SEC") for final approval. These new proposals supplement the corporate governance reform proposals submitted to the SEC by Nasdaq in June 2002, and are intended to create "bright line" standards to ensure proper application and easy enforcement. Some of the new reforms would go into effect within 60 days after SEC approval. AMEX's proposals also are intended to provide increased disclosure and strengthened board oversight and audit committee responsibility.

The Nasdaq and AMEX proposals are part of an ongoing effort of the government, the SEC and securities industry regulators to strengthen corporate governance rules. Last week Congress enacted the Sarbanes-Oxley Act of 2002 (the "Act"), which institutes broad reforms concerning oversight and activities of the accounting profession, corporate governance and penalties for corporate fraud. President Bush is expected to sign the Act into law early this week. Please see Willkie Farr & Gallagher's memo, dated July 29, 2002, for a discussion of the Act. Please let us know if we can assist you in remaining abreast of new corporate governance proposals and developing procedures to ensure compliance with any new rules that are enacted.

Nasdaq Proposed Rules

The new Nasdaq proposed rule changes would:

- require boards of Nasdaq companies to be comprised of a majority of independent directors and further tighten the definition of "independence";
- empower independent directors and audit committees by increasing their decision-making authority;
- mandate company disclosure of certain insider transactions;
- mandate continuing education for all directors;
- require shareholder approval for all stock option plans;
- require companies to adopt codes of conduct; and
- increase reporting requirements for non-U.S. companies.

For planning purposes, Nasdaq-quoted companies should monitor in particular the proposed rules relating to board composition, shareholder approval for stock option plans and company disclosure of insider transactions.

1. Board Independence

Nasdaq rules currently require audit committees to be comprised of three independent directors, but contain no requirement regarding the proportion of the entire board of directors that must be independent. Under the proposed rules, the majority of board members will be required to be independent. The proposed rules further narrow the definition of who will be considered to be "independent" by excluding large shareholders, relatives of executive officers and employees of a company's outside auditor. The proposed rules also establish a three year "cooling off" period for all inside directors before they could be considered independent.

2. Empower Audit Committees and Independent Directors

The proposed rules would give audit committees the sole authority to hire and fire outside auditors and approve all non-audit related services provided by the outside auditors. Audit committees would be given the authority to retain legal, accounting and other experts.

The proposed rules would strengthen the roles of independent directors in compensation and nomination decisions by requiring that executive compensation be approved by an independent compensation committee or a majority of the independent directors and that all director nominations be approved by an independent nominations committee or a majority of the independent directors. One non-independent director would be permitted to serve on the compensation and nomination committees under certain circumstances.

3. Company Disclosure of Insider Transactions

The proposed rules appear to require companies to disclose insider transactions in a company's stock in excess of $100,000 within two business days of the transaction. Current SEC rules require officers, directors and ten percent stockholders to disclose all transactions in a company's stock (regardless of the amount of the transaction) within ten days of the end of the month in which the transaction occurred. The SEC has proposed changes to significantly shorten this period. There is currently no requirement that the company itself publicly disclose such shareholder transactions.

4. Continuing Director Education

Under the proposed rules, all directors would be required to participate in continuing education. The Nasdaq board has asked the Nasdaq Listing and Hearing Review Council to develop appropriate rules.

5. **Stock Option Plans**

Nasdaq rules currently require shareholder approval of all stock option plans in which officers and directors participate unless those plans are "broadly based" (plans in which at least a majority of the options (and other equity-based awards) are granted to participants who are not officers or directors). Under the proposed Nasdaq rules submitted to the SEC in June, shareholder approval would be required for all plans in which any officers or directors participate. The new proposed rules would require shareholder approval of all stock option plans, regardless of whether officers or directors participate. An existing exemption allowing companies to provide inducement grants to new executive officers without shareholder approval would still be available, so long as the grants were approved by an independent compensation committee or a majority of the company's independent directors.

6. **Codes of Conduct**

The proposed rules would require all companies to adopt and maintain codes of conduct. Each code would be required to address conflicts of interest and compliance with applicable laws, include enforcement mechanisms, disclose waivers to officers and directors and be publicly available.

7. **Non-U.S. Companies**

The proposed rules would require non-U.S. companies to disclose all exemptions to corporate governance listing standards due to contrary home country practice. Non-U.S. companies would also be required to file with the SEC and Nasdaq semi-annual and interim reports, including financial statements prepared in accordance with the accounting rules of the home country marketplace.

AMEX Proposed Rules

The AMEX proposed rules would:

- increase the independence of boards of directors of AMEX-listed companies and tighten the definition of "independence";
- require audit committees to be chaired by a person with sophisticated financial experience;
- require that the full board, including a majority of the independent board members, formally approve the hiring and firing of outside auditors;
- require that audit committees approve all related party transactions entered into by the company;
- require shareholder approval of all stock option plans in which officers and directors participate;

- mandate timely public disclosure of board changes and vacancies, "going concern" opinions and warnings about violations of corporate governance requirements;
- require that companies hold board and audit committee meetings at least quarterly;
- require companies to adopt a code of ethics and implement a compliance program that would include reporting to the audit committee; and
- prohibit any American Stock Exchange employee or floor member from serving on the board of any AMEX-listed company.

For planning purposes, AMEX-listed companies should monitor in particular the proposed rules relating to board composition, compliance programs and shareholder approval for stock option plans.

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If you wish to obtain additional information regarding Nasdaq's proposed rule changes, please contact Steven A. Seidman (212-728-8763, sseidman@willkie.com), Frank Daniele (212-728-8216, fdaniele@willkie.com) or the partner who regularly works with you.

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