



Corporate Governance Requirements

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Why is this topic important?

- **Nasdaq and New York Stock Exchange require listed companies to maintain certain corporate governance standards**
- **SEC disclosure regarding corporate governance required in prospectus and proxy statement**
- **Directors of public companies are subject to greater risk of shareholder litigation**



Board Independence Requirements

- **Independent Directors**
 - Generally, independence defined by applicable exchange rules
 - No relationships with the company or management that would interfere with the exercise of independent judgment in carrying out the responsibilities of a director (Nasdaq)
 - No material relationship with the company (NYSE)
- Nasdaq and NYSE rules include a list of relationships that indicate the director is not independent
- **Majority of directors must be independent**
- **Board Committees**
 - Audit, compensation, nominating & corporate governance committees must comprise only independent directors
 - Heightened independence requirements for audit & compensation committee members
- **Executive sessions of independent directors required**
- **Prospectus and proxy statement disclosure requirements**



Board Committee Requirements

Audit Committee	
SEC	<ul style="list-style-type: none">• Independent under SEC rules• No compensation (direct or indirect) other than director / committee fees• Not an affiliate of the company or its subsidiaries
Nasdaq	<ul style="list-style-type: none">• Independent under Nasdaq rules• At least 3 members• Did not prepare financial statements for company or its subsidiary during past three years• Able to read and understand fundamental financial statements• One member with financial sophistication
NYSE	<ul style="list-style-type: none">• Independent under NYSE rules• At least 3 members• Financially literate• One member with accounting or related financial management experience



Board Committee Requirements

Compensation Committee	
SEC	<ul style="list-style-type: none">• Independent under applicable national securities exchange rules, giving consideration to:<ul style="list-style-type: none">• Source of compensation• Affiliate status• Comprised solely of two or more "non-employee directors" (to exempt non-discretionary transactions between company and officer or director from Section 16(b) of Exchange Act)
Nasdaq	<ul style="list-style-type: none">• Independent under Nasdaq rules• At least two members• Consider independence from management
NYSE	<ul style="list-style-type: none">• Independent under NYSE rules• Consider independence from management
IRC Section 162(m)	Comprised solely of two or more "outside directors"



Board Committee Requirements

Nominating and Corporate Governance Committee	
SEC	If no nominating committee, disclose basis for not having a committee and directors who participate in consideration of nominees
Nasdaq	<ul style="list-style-type: none">• Committee not required• Decisions regarding director candidates and executive compensation must be made by a majority of the independent directors or a committee of such directors• Independent directors must meet Nasdaq independence standards
NYSE	<ul style="list-style-type: none">• Committee required• Independent under NYSE rules



Board Committee Phase-In for Compliance

- At least one independent member at the time of listing
- Majority of independent members within 90 days of listing
- Fully independent committee within one year of listing



Additional Corporate Governance Requirements

- Certifications
 - Nasdaq: company certifies independence, committee composition requirements, annual review and assess adequacy of committee charter, other corporate governance requirements
 - NYSE: annual CEO certification that he/she is not aware of any violation of any corporate governance listing standards, prompt notice of any non-compliance
- Service on Multiple Audit Committees (NYSE): If audit committee member serves on more than three public company audit committees, board must determine if member's ability to serve is impaired by simultaneous service
- Internal Audit Function (NYSE): Required within one year from listing



Corporate Governance Charters and Policies

- **Required:**
 - Charters for audit committee, compensation committee, nominating & corporate governance committee
 - Code of business conduct and ethics
 - Corporate governance guidelines (NYSE)
- **Other corporate governance policies frequently adopted:**
 - Insider Trading Policy
 - Regulation FD / communications policy
 - Whistleblower policy
 - Anticorruption policy
 - Director & executive compensation policies / benefit plans
 - Related party transaction policy
 - Disclosure controls
 - Investment policy



Website Disclosures

- SEC Requirements
 - Director independence standards (if set by company)
 - Conflict minerals
- NYSE Requirements
 - Audit, Compensation, and Nominating Committee Charters
 - Presiding director at board executive sessions
 - Audit committee member service on other companies' boards
 - Code of Ethics (and changes to code)
 - Corporate Governance Guidelines
 - Procedures for security holders to communicate with directors
 - Contributions to certain tax exempt organizations
- Disclosure may be satisfied by website posting
 - Non-independent members of board committees (Nasdaq)
 - Reg. FD Compliance
 - Director attendance at annual meetings
 - Reg. G Compliance
 - Third party director and nominee compensation



Key Takeaways

- **Analyze board independence matters before the IPO process to make appropriate disclosures in the prospectus, modify board and committee composition**
- **Prepare corporate governance documents early in the IPO process to ensure sufficient time for directors to review and for company to provide training for directors, officers and employees**
- **Coordinate with investor relations team to post committee charters and corporate governance documents on investor relations section of company's website**
- **Committees review charters, corporate governance documents on annual basis**



Thank you!

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