Sullivan
SULLIVAN & WORCESTER

Public Company Compliance Manual

A Survey of SEC Filing Requirements and Obligations of Directors, Officers and Principal Stockholders of a Publicly-Held Company

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Introduction

This memorandum outlines the basic legal obligations of a public company under the Securities Act of 1933 (the "Securities Act") and the Securities Exchange Act of 1934 (the "Exchange Act"), as well as those of its directors, officers and principal stockholders ("insiders"). For these purposes, we assume that the Company is a domestic issuer and its shares are listed on the Nasdaq Global Market. On request, we will provide supplemental information for foreign private issuers, other exchange-listed companies and Over-the-Counter Bulletin Board companies. Companies that are traded on the Over-the-Counter Bulletin Board are subject to the same Securities Act and Exchange Act requirements as Nasdaq-listed companies, but are not subject to many of the corporate governance rules of Nasdaq. Exhibit A hereto is a summary SEC compliance checklist that indicates the source of the various compliance and governance rules; generally, OTC companies do not have to comply with many of the rules that are Nasdaq-only (though the OTCQX division has implemented certain governance requirements), but may want to adopt some as best practices or in preparation for later up listing to Nasdaq. In addition "smaller reporting companies", defined to include, among others, companies with a public float (i.e., the equity held by non-insiders) of less than $250 million as of the end of their second fiscal quarter or revenues less than $100 million and a public float of less than $700 million, as well as "emerging growth companies," as defined under the Jumpstart Our Business Startups Act ("JOBS Act"), are eligible to provide scaled-back disclosure in many instances in their Securities and Exchange Commission ("SEC") filings.

Generally, the recurring obligations of the Company and its insiders fall into the following categories:

(1) For the Company, (i) financial and other reports required to be filed with the SEC, as well as proxy statements and annual stockholder reports, (ii) reports and filings related to the listing of the Company's Common Stock on the Nasdaq Global Market and (iii) general disclosure of corporate information to the marketplace; and

(2) For Insiders, (i) general insider trading restrictions relating to Company information and personal securities transactions, (ii) short-swing profits and beneficial ownership reporting to the SEC of transactions in Company securities and (iii) rules (e.g., Rule 144) relating to sales of restricted securities.

Attached as exhibits are short memoranda on various securities law-related topics. In addition to this memorandum and the summary SEC compliance checklist in Exhibit A, we wish to draw your particular attention to Exhibit B (Schedule of Recurring Filing Dates and Events) and Exhibit C (Memorandum on Insider Reporting and Liability for Short-Swing Trading).

Please note that the information in this memorandum can quickly become dated as a result of SEC or Nasdaq rule changes; counsel should always be consulted on current developments. The memorandum is updated from time to time, and if you wish to receive updates, please contact one of the attorneys listed on the cover page.

This memorandum is intended to provide a general treatment of a broad segment of the principal legal obligations of a public company and its insiders under the federal securities laws. It is not intended to provide an exhaustive treatment for every contingency.

In addition, this memorandum is not intended to establish an attorney-client relationship between the recipient and Sullivan & Worcester LLP. Such a relationship may only be established by an engagement letter signed by the firm. This memorandum is not intended as legal advice, and should not be relied upon as such.

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I. SEC REPORTING REQUIREMENTS

A. Required Reports and Filings.

The principal purpose of various SEC filings required of the Company is to provide information about the Company on a continuing basis to ensure that buyers and sellers of the Company's securities in the public markets have all of the information needed to make informed investment decisions. The Company's filings can be accessed on the SEC's website, and proper corporate governance also requires them to be accessible on the Company's website.

Whenever reference is made in this memorandum to a filing date or due date, it refers to the date that the filing must actually be received by the SEC. Generally, if the due date of an SEC report is not a business day, the report is due on the next succeeding business day. SEC filings generally are required to be filed electronically using the SEC's "EDGAR" System, which is discussed in further detail later in this memorandum. You will need to determine whether the Company will make EDGAR filings directly or rely upon a third party to do so, such as a financial printer. Procedures must be put in place in advance of the due date of the first filing.

1. Form 10-K – Annual Report.

This report must be filed with the SEC after the end of each fiscal year. For so-called "accelerated filers", Form 10-K is due within 75 days after the fiscal year; for "large accelerated filers", this deadline is 60 days. For all other issuers, the report is due in 90 days. The term "accelerated filer" means an issuer after it first meets the following conditions as of the end of its fiscal year:

- *The aggregate market value of the voting and non-voting common equity held by non-affiliates of the issuer as of the end of its second fiscal quarter is $75 million or more (for "large accelerated filers" the threshold amount is $700 million) (and the issuer is not eligible to use certain requirements under the revenue test for "smaller reporting companies");*

- *The issuer has been subject to the requirements of Section 13(a) or 15(d) of the Exchange Act for a period of at least twelve calendar months; and*

- *The issuer has filed at least one annual report (e.g., Form 10-K) pursuant to Section 13(a) or 15(d) of the Act.*

Form 10-K calls for information much like that in a public offering prospectus. The information prescribed by the form includes:

- *Description of the Company's business;*

- *Discussion of risk factors impacting the Company's business;*

- *Description of material properties used in the Company's business;*

- *Description of legal proceedings in which the Company is involved and certain tax penalties, if any;*

- *Market for the Company's Common Stock, related stockholder matters and the Company's purchases of its equity securities;*

- *Management's Discussion and Analysis of Financial Condition and Results of Operations for the last two fiscal years (it should be noted that both by rule and current practice, MD&A disclosures are significantly more full-blown and candid than they have been historically, and, although financial projections are not technically required, disclosure of "known trends and uncertainties" is required);*

- *Quantitative and qualitative disclosures about market risks;*

- *Any unresolved SEC staff comments on previous SEC filings;*

- *Audited financial statements (2 years of balance sheets and three years of income statements) in accordance with GAAP;*

- *Changes in and disagreements with accountants on accounting and financial disclosure, if any;*

- *Management's report on disclosure controls and procedures and on internal control over financial reporting (for which compliance dates vary – see Exhibit D);*

- *Information on directors and executive officers of the Company, including compensation;*

- *Security ownership of certain beneficial owners and management as of a current date;*

- *Availability of code of ethics, information regarding the Company's insider trading policy and inclusion of the Company's executive compensation "claw back" policy;*

- *Principal accounting fees and services;*

- *Description of audit committee functions and identity of audit committee financial expert;*

- *Certain relationships and related "insider transactions" in which the Company and its officers, directors and 10% stockholders participate; and*

- *Exhibits (with hyperlinks) and financial statement schedules.*

There are rules permitting the incorporation of information by reference into Form 10-K from the Company's Proxy Statement and its Annual Report to Stockholders (both discussed below). Certain data must also be coded in in-line eXtensible Business Reporting Language ("XBRL"). It is important to note that the Form 10-K must be signed by the Company's principal executive officer, principal financial and accounting officer, and a majority of the Company's Board of Directors. A copy of Form 10-K and the related instructions can be found at www.sec.gov/about/forms/secforms.htm. The Form 10-K is in a different format and serves a somewhat different function than the Annual Report to Stockholders which is distributed to each stockholder. The Annual Report to Stockholders is discussed at greater length in Item 10 below.

2. Form 10-Q – Quarterly Report.

These reports must be filed with the SEC following each of the Company's first three fiscal quarters. For accelerated and large accelerated filers, the report is due 40 days after quarter-end. For all other issuers, the report is due in 45 days. Form 10-Q must include the following information:

- *Condensed, unaudited comparative balance sheets, statements of income and statements of cash flow (and related XBRL in-line coding));*

- *Management's Discussion and Analysis of Financial Condition and Results of Operations and a discussion relating to certain accounting changes and other data;*

- *Qualitative and quantitative disclosures about market risk;*

- *Management's report on controls and procedures;*

- *Information with respect to new or changes in material legal proceedings, entry into or amendment of so-called "10b5-1" plans by insiders, new or changed risk factors, unregistered sales of equity securities, use of proceeds and issuer repurchases, defaults in senior indebtedness and certain other information; and*

- *Periodic update regarding the use of proceeds derived from the Company's initial public offering.*

A copy of Form 10-Q and the related instructions can be found at www.sec.gov/about/forms/secforms.htm

3. Form 8-K - Report of Material Events.

This form must be filed with the SEC within four business days after the occurrence of any of the specified events. Issuers must be constantly on guard to inform their legal advisers of the occurrence (or prospective occurrence) of these events. The events can be simply summarized as including virtually any material event relating to the Company. This list of reportable events is as follows:

- *Entry into a material definitive agreement – requires the disclosure of material definitive agreements entered into by the company that are not made in the ordinary course of business and material amendments.*

- *Termination of a material definitive agreement – exemptions include expiration of an agreement on a stated termination date and completion of the obligations by all parties to an agreement.*

- *Bankruptcy or receivership.*

- *Completion of acquisition or disposition of assets – although the disclosure concerning a completed acquisition is required to be filed in the Form 8-K within four business days, the pro forma financial information and financial statements for a completed acquisition (but not disposition) are permitted to be filed by amendment up to seventy-one days later.*

- *Results of operations and financial condition – requires public announcements or releases of material non-public information regarding a company's results of operations or financial condition for a completed fiscal period to be furnished (e.g., an earnings press release). Typically, if there will also be an earnings call, these Form 8-Ks are filed before the call.*

- *Creation of a direct financial obligation or an obligation under an off-balance sheet arrangement – requires disclosure if a company becomes obligated under a direct financial obligation, such as a material loan agreement.*

- *Events that accelerate or increase a direct financial obligation or an obligation under an off-balance sheet arrangement.*

- *Costs associated with exit or disposal activities.*

- *Material impairments – requires disclosure when a board or an authorized officer concludes that a material charge for impairment to one or more of the company's assets, including, an impairment of securities or goodwill, is required under GAAP.*

- *Notice of delisting or failure to satisfy a continued listing rule or standard; transfer of listing.*

- *Unregistered sales of equity securities.*

- *Results of stockholders meetings.*

- *Material modification to rights of security holders.*

- *Changes in registrant's certifying accountant.*

- *Non-reliance on previously issued financial statements or a related report or completed interim review.*

- *Changes in control of the registrant.*

- *Departure of directors or principal officers; election of directors; appointment of principal officers, and entry into compensation agreements or other arrangements with these individuals.*

- *Amendments to corporate charter or bylaws; change in fiscal year.*

- *Temporary suspension of trading under registrant's employee benefit plans.*

- *Amendments to code of ethics; waiver of a provision of the code of ethics.*

- *Regulation FD disclosure - permits information to be furnished pursuant to and within the time periods mandated by Regulation FD (discussed below). The four business day filing deadline does not apply to disclosures under this item.*

- *Other events - permits disclosure of information that a company deems of importance to security holders, including information required to be filed* *pursuant to Regulation FD. The four business day filing deadline does not apply to disclosures under this item, but if used as the primary Regulation FD compliance vehicle, an even quicker deadline may apply.*

- *Financial statements (generally related to material acquisitions) and exhibits (with hyperlinks).*
- *A copy of Form 8-K and related instructions can be found at www.sec.gov/about/forms/secforms.htm.*

4. Rule 10b-17 Report.

Under Rule 10b-17 of the Exchange Act, the Company must give notice to Nasdaq at least 10 days prior to the record date, of (i) a dividend or other distribution in cash or in kind, including a dividend or distribution of any security; (ii) a stock split or reverse split; or (iii) a rights or other subscription offering. Nasdaq has developed online forms for reporting cash dividends. These forms are available at www.nasdaq.com.

5. Earnings Reports Under Underwriting Agreements.

Underwriting agreements relating to public offerings typically require the issuer to make generally available to its stockholders, as soon as practicable, an "earning statement" complying with the provisions of Section 11(a) of the Securities Act, and covering period of at least a twelve (12) months beginning after the effective date of the applicable registration statement. Generally, the Company will satisfy this requirement by providing stockholders with an annual report or the Company's Form 10-K.

6. Registration Statement on Form S-8.

A registration statement on the short-form Form S-8 can be used to register shares for offer and sale pursuant to certain employee benefit plans (including certain compensatory contracts), so that certain employees, directors and certain consultants (that are not entities) may receive publicly tradable securities under such plans. Form S-8 registration statements become effective immediately upon filing and are updated continuously and automatically when the issuer files its reports required under the Exchange Act. The Company is required to deliver to participants in the plan its Annual Report to Stockholders (or until preparation of its first Annual Report, the IPO prospectus), together with a prospectus containing other specified information with respect to the benefit plan. The Company is required to maintain, in a separate file, copies of the Form S-8 registration statement, its most recent Annual Report (or IPO prospectus), and the document referred to above containing information regarding the plan. In addition, the Company is required to deliver to all employees participating in the plan (including all holders of outstanding options) copies of all reports, proxy statements and other communications sent generally to stockholders, at the same time as they are sent to the stockholders. For employees, companies can deliver these documents via e-mail, subject to certain conditions. Directors and officers acquire registered shares upon exercise of a stock option covered by a Form S-8 registration statement; nevertheless, they will have to resell those shares either pursuant to Rule 144, or pursuant to a separate re-sale prospectus. (See Section V regarding Rule 144 restrictions if no re-sale prospectus is on file.)

7. Forms 3, 4 and 5 – Reports of Ownership of Securities.

Every person who is an officer, director or 10% stockholder of the Company must file a Form 3 indicating the number of shares of the Company's Common Stock which such person beneficially owns. Subsequent to the IPO, each new officer, director or 10% stockholder of the Company must file a Form 3 when elected to office or becoming a 10% stockholder. For such persons, the form will be due within 10 days of the date they become subject to this reporting requirement.

Subsequent to the filing of a Form 3, each officer, director and 10% stockholder must file a Form 4 or a Form 5 to report certain changes in beneficial ownership.

Copies of Forms 3, 4 and 5 can be found at www.sec.gov/about/forms/secforms. There are no filing fees for these forms.

Generally:

(a) most transactions, such as purchases or sales of stock, grants of equity, exercise of an option or gifts, must be reported on a Form 4 within two business days after the date of the transaction on which such person's ownership of the Company's securities changes; and

(b) a few other limited reportable transactions must be reported on Form 5 within 45 days after the end of the fiscal year if not voluntarily reported earlier on a Form 4 during the year.

Forms 3, 4 and 5 must be filed electronically with the SEC. Because these are not Company filings, each officer, director and 10% stockholder required to make a filing must obtain his or her own EDGAR identification numbers (discussed in more detail under Section I.A.12 below). However, the Company is required to post or link to the reports on its website.

To ensure filing compliance, any officer or director who proposes to dispose of or acquire shares (or options or other derivative securities) of the Company's Common Stock or any rights to acquire such shares should immediately report such proposed disposition or acquisition to the Company's general counsel or other person designated to perform this function.

A discussion of the Section 16(b) six-month insider trading prohibitions to which these Forms 3, 4 and 5 relate is set forth under Section I.C.1 below. A more detailed explanation of the obligations of the Company's officers, directors and 10% stockholders under Section 16 of the Exchange Act, including these Forms 3, 4 and 5 is set forth in Exhibit C.

8. Proxy Statement.

Prior to annual meetings of the Company's stockholders, the Company must distribute to its stockholders a proxy statement in the form dictated by SEC rules. Proxy statements for a typical annual meeting (i.e., one at which the only matters to be acted upon are the election of directors, approval of certain compensation matters, the ratification of accountants and certain proposals by stockholders) must be filed with the SEC and Nasdaq not later than the date they are distributed to stockholders. Proxy statements for meetings at which non-routine matters (such as an amendment to the Company's corporate charter) are to be submitted to stockholders should be pre-filed with the SEC a minimum of 10 calendar days before public distribution, although in most cases a longer period is appropriate. Final proxy statements and Annual Reports to Stockholders (described below) must be posted on a non-SEC website which must be configured to comply with SEC technical parameters.

Proxy statements for annual meetings (other than for emerging growth companies) need to include a "say-or-pay" proposal allowing stockholders to vote on the executive compensation disclosures in the proxy statements. Every six years, the stockholders will also vote on how often they want to vote on say-or-pay - either every one, two or three years. While each of these proposals are non-binding, ordinarily the Company and its Board of Directors will take its stockholders' vote in consideration when considering executive compensation and the frequency of the vote on future "say-or-pay" proposals.

Normally, the Company should plan on having the Company's transfer agent mail the proxy statement to its stockholders at least five weeks to a month or so before the annual meeting. SEC regulations require inquiries of street and nominee name holders regarding the numbers of beneficial owners for whom shares are held, so that additional sets of materials can be supplied. These inquiries should be made by the Company's transfer agent at least 20 business days before the record date of the meeting of stockholders, thus requiring adequate prior notice by the Company to its transfer agent of such mailing date.

As an alternative to mailing, the SEC also allows companies to "deliver" proxy statements and Annual Reports to Stockholders (described below) by posting them on a company or third party website and notifying stockholders of their availability and website location, along with a notice of the meeting at least 40 days before the meeting.

In addition to information about the meeting, internet availability of proxy materials and required votes, the proxy statement must also contain specific disclosure concerning prospectus-type information about management, related person transactions and stock ownership, deliberations of the compensation committee of the Board of Directors as to the relationship of corporate performance to executive compensation and as to the basis for all elements of executive officer compensation. Extensive disclosures are required for executive and director compensation and equity grant practices, information about compensation consultants and risks related to compensation. These rules require significant tabular and narrative information about all types of compensation and a "Compensation Discussion and Analysis" covering how and why executive compensation is determined and approved, as well as information about how the CEO's pay relates to median employee compensation and how executive compensation relates to the performance of the Company. The proxy statement must also describe committees of the Board of Directors, the determinations of independence of directors, the process for nominations and recommendations for nominations for Board seats, beneficial ownership by directors and officers, policies on hedging of Company securities by insiders, communications with directors and minimum qualifications for directors, Board leadership structure, why the Company believes its nominees are qualified to serve on the Board, potential payments upon a change of control, as well as fees paid to directors. Further, the proxy statement must disclose all of the fees paid to the Company's accountants and any policy for pre-approval of non-audit services, as well as contain a report of the audit committee of the Board. In some circumstances, stockholders may have the ability to include their own proposals in the Company's proxy statement.

If any other matters are submitted to stockholders for a vote, the proxy statement must contain disclosures with respect to these additional matters. If options are repriced, the proxy statement must also contain specific disclosures concerning such repricing. It is important to note that the proxy rules require specific disclosure if any director has attended fewer than 75% of the combined number of meetings of the full Board plus any Board committees on which such director serves, and also require a statement of the Company's policy for directors' attendance at annual meetings of stockholders and how many directors attended the prior year's meeting. Additional SEC rules apply in the event of proxy contests and with respect to proposals furnished by stockholders. In addition, the Company is required to disclose to the public in its proxy statement the name of any director, officer or 10% stockholder who has not met the applicable Form 3, 4 and/or 5 reporting obligations in a timely manner.

9. Annual Report to Stockholders.

Under the SEC proxy rules, the Annual Report to Stockholders must be distributed (or made electronically available, as referenced above) with or before the Proxy Statement furnished in connection with the annual election of directors. The Annual Report often contains a CEO's or President's letter to stockholders about developments in the business over the last year. Other than certain required financial information and a required graph illustrating company stock performance, there are only a limited number of specific SEC requirements as to content. The Annual Report is not required to be pre-filed with or reviewed by the SEC, although it must be filed with the SEC. The Annual Report to Stockholders, like all other financial communications, can be a source of legal liability if it contains a material misstatement or omission.

10. Schedule 13G and Schedule 13D.

Any person not eligible to file a Schedule 13G (described below) who makes an acquisition of an issuer's stock that results in ownership of more than 5% of the class of securities must file a Schedule 13D with the SEC within five business days of such acquisition. Ownership of stock for those purposes is based on whether a person has sole or shared voting or investment control, and so may be broader than shares directly owned. The underlying purpose of Schedule 13D is for these investors to disclose their plans or intentions regarding the control, business purpose and structure of a public company. Any material change in information previously reported on Schedule 13D must be reported within two business days on an amendment to Schedule 13D. As a general rule, the acquisition or disposition of 1% or more of a registered class of securities is considered material. Schedule 13D requires disclosure relating to the issuer, the security, the stockholder's identity and background, the source and amount of funds or other consideration used to acquire the securities, the purpose of the transaction, the stockholder's total equity interest in the issuer, and other information. A copy of the Schedule 13D or 13G must also be sent to the Company by registered or certified mail.

The short form Schedule 13G, which requires much less detail about the background of the acquisition of the stock and the holder, applies to certain qualified institutional investors and passive investors where securities have been acquired in the ordinary course of business without the intent of affecting the control of the Company. The short form may be used until the investor owns 20% or more of the outstanding class of securities, provided such investors have not acquired or do not hold the securities to influence control of the issuer. An initial Schedule 13G filing is due either within five business days of exceeding 5% or for certain institutional investors, within 45 calendar days after the applicable calendar quarter (or within five business days after the end of the applicable month if above 10%). Any such Schedule 13G-eligible person who owns, directly or indirectly, more than 5% of a class of equity securities of the Company as of the effective date of the Company's registration statement under the Exchange Act or as of the end of a calendar quarter, is required to make a filing with the SEC on Schedule 13G within 45 calendar days after the end of such quarter. Each person or group of persons who owns (and/or holds presently exercisable options for) more than 5% of the Company's Common Stock and who has filed a Schedule 13G must file quarterly amendments to Schedule 13G within 45 days after the end of any quarter in which there were material changes in their equity ownership.

No fee is required for a Schedule 13D, 13G or a 13D or 13G amendment, but filers must first obtain EDGAR (as defined below) codes for electronic filing with the SEC.

A copy of Schedules 13G and 13D and the related instructions can be found at www.sec.gov/about/forms/secforms.htm.

11. Form SD (Specialized Disclosure Report)

Pursuant to the Sarbanes-Oxley Act, certain filers that are subject to reporting under the Exchange Act, and utilize "Conflict Minerals" in their products, are required to file an annual Form SD by May 31 each year. Form SD is a specialized form that is intended to disclose a filer's use of "Conflict Minerals" originating from the Democratic Republic of Congo, or an adjoining country, provided the Conflict Minerals are "necessary to the functionality or production" of a product manufactured or contracted to be manufactured by the filer.

A copy of Form SD and the related instructions can be found at https://www.sec.gov/files/formsd.pdf.

12. The SEC's Electronic Data Gathering and Retrieval ("EDGAR") System.

a. Overview. Most SEC documents, including Forms 10-K and 10-Q and proxy statements, must be filed with the SEC electronically using the SEC's Electronic Data Gathering and Retrieval system. In addition, companies are required to tag certain financial data using XBRL. Filings on EDGAR that have XBRL-tagged data will allow companies, analysts and investors to more easily compare company data using a variety of analysis tools.

b. EDGAR-Mandated Filings. Every EDGAR-mandated filing by a public company must be made in electronic form. EDGAR-mandated filings include Forms 10-K, 10-Q and 8-K, proxy statements, annual reports to stockholders, Forms 3, 4 and 5, Form D (used for certain private placements), Schedules 13D and 13G, all registration statements, Forms 144 and most other SEC filings.

c. How to use EDGAR. Documents are filed with the EDGAR system electronically. The Company must obtain (via a short electronic application) specific identifying codes and passwords that will allow it to make filings via EDGAR. For questions about obtaining EDGAR identification numbers, contact Company counsel or go to the SEC's EDGAR filer management website at www.filermanagement.edgarfiling.sec.gov. The document and all exhibits must be provided to the SEC in computer-readable form and all exhibits listed must be hyperlinked. Moreover, the EDGAR system contains a complex system of rules regarding the format of the electronic submissions. A substantial amount of work may be required to prepare a document for filing once it is in its final substantive form. Specifically, since all exhibits must also be filed electronically (and hyperlinked), it is important to obtain computer-readable forms (not images) of all requisite material agreements (e.g., leases and bank loan agreements) that have been prepared by firms other than the Company or counsel preparing the EDGAR filing.

d. Implementing Methodology to Comply with EDGAR. Public companies have taken one of two approaches to addressing the EDGAR requirement. A large number of companies have charged their own accounting staff with the task of setting up a suitable computer facility and making the required filings "in-house." A second group of companies use their financial printer or outside counsel to make their filings. A manually executed hard copy of every EDGAR filing must be retained for at least five years. All signatures must also be typed into all documents filed.

13. Disclosure Controls and Procedures; Internal Control Over Financial Reporting.

Under the Sarbanes-Oxley Act, each Form 10-K and Form 10-Q must contain certifications by the Company's CEO and CFO to the effect that they have reviewed the filing, and believe that the filing does not contain any material misstatements or omissions and that the included financial statements and other financial information fairly present the Company's financial condition. The certifications are also required to certify (if true) that the Company's "disclosure controls and procedures" are adequate to ensure the timeliness, accuracy and completeness of its periodic SEC reports. These disclosure controls and procedures are mandated by the Exchange Act and have to be re-examined by the CEO and CFO as of the end of each fiscal quarter and the results reported on. Among the procedures commonly implemented by reporting companies are the designation of a "Disclosure Committee" of key insiders that will assist in the evaluation process and review all Exchange Act filings and other public disclosures. Typically, it is the CEO and CFO who have the most comprehensive and current information about the Company that is relevant to disclosure compliance. It has become critical that these officers become actively involved in the preparation of the Company's disclosure documents.

Additionally, beginning with a company's second annual report, annual certifications are required that the Company has in place internal control over financial reporting to provide reasonable assurance on the integrity of the financial statements and internal financial processes. Unless the Company is small enough for an exemption or is an "emerging growth company," the Company's outside accountants also must provide an attestation report on internal controls. Management must base its assessment on a "recognized control framework". The so-called COSO framework is the most common framework of choice in the U.S. and is extremely complex. The SEC and Public Company Accounting Oversight Board continue to try to make the rules more user-friendly, but to date they remain challenging to apply. As a result, although management's certifications are relatively simple in form, the underlying procedures and record keeping requirements supporting the certifications have expanded significantly the cost and complexity of Exchange Act compliance. The compliance dates for the internal control rules vary and are summarized in Exhibit D.

14. General Issues Relating to Filing Requirements.

All Exchange Act filings must be carefully prepared and filed in a timely manner to ensure full compliance by the Company with the Exchange Act. It is also important to note that the Company's reports under the Exchange Act are likely to be incorporated by reference (i) in any number of presently unanticipated agreements or documents (e.g., merger or acquisition agreements), and (ii) in current and future registration statements of the Company, whether filed on behalf of itself or on behalf of selling security holders. Therefore, the uses and, in particular, the liabilities which can attach to these reports can go beyond those associated strictly with Exchange Act compliance.

Compliance with the reporting requirements of the Exchange Act is also a pre-condition to the availability of the exemption from the registration requirements of the Securities Act afforded by Rule 144 (described below). Rule 144 is of special importance to all the Company's stockholders who bought their Common Stock prior to the Company's initial public offering or in a subsequent private placement and who wish to sell that "restricted stock" publicly. The Company's affiliates (officers, directors and major stockholders) will also generally use Rule 144 to sell their stock. In addition, Form S-8 (see Section I.A.6 above) will be unavailable if the Company is not up to date in its Exchange Act reporting. Finally, future use by the Company of a short-form registration statement on Form S-3, which facilitates and expedites certain offerings by more seasoned companies, is conditioned on 12 months of the timely filing of Exchange Act reports.

In making public disclosures, the Company should also be mindful if it intends to include financial measures not calculated in accordance with generally accepted accounting principles. A common example is the use of EBITDA in a press release. While not prohibited, Regulation G and related rules require certain reconciliations and disclosures regarding the usefulness of such measures. The SEC has recently intensified its scrutiny of non-GAAP financial measures, and therefore, counsel should be consulted prior to including non-GAAP financial measures in any filing, press release, website section, presentation or other public forum.

Controlling persons of the Company can have liability with respect to any Exchange Act filings that are not in compliance with the rules and regulations of the SEC, unless the controlling person can show that he or she "acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action." Accordingly, internal procedures should be established by the Company to assure timely, accurate and complete reporting as required under the Exchange Act.

As the above discussion of Exchange Act reports reflects, there are a number of inter-related processes which will recur on an annual cycle in connection with the Company's SEC reporting. In order to prepare its SEC filings, each year questionnaires will be circulated to all directors, officers and 5% stockholders as a means of generating the required information. A specific schedule will have to be established to ensure timely SEC reporting and proper organization of the Annual Meeting and related matters. Close coordination is required among the Company, counsel, auditors, printers and anyone else participating in the preparation of the Annual Report to Stockholders. To allow a comfortable timetable:

- *Questionnaires should be circulated to directors, officers and 5% stockholders in ample time to consider replies in preparing proxy material.*

- *Preliminary proxy materials (if required) should be filed with the SEC at least 15 days prior to the expected date of delivery to stockholders.*

- *Definitive proxy materials and the Annual Report to Stockholders should be mailed to stockholders and filed with the SEC at least four weeks (or, under e-proxy rules, posted electronically 40 days) prior to the Annual Meeting date.*

- *A record date should be established in consultation with the transfer agent prior to the mailing or electronic delivery date.*

- *Inquiries must be made by the transfer agent of brokers and others concerning the number of sets of materials they will require for persons whose stock is held in street names.*

- *Inquiries must be made by the transfer agent of clearing agency nominees concerning the brokerage firms and other institutions which hold the Company's stock on the clearing agencies' books, to get names of clearing agency members who hold the stock.*

- *Non-routine agenda items for the annual meeting need to be identified.*

- *Board resolutions should be adopted dealing with formalities relating to the Annual Meeting (e.g., setting meeting and record dates, specifying purposes of the meeting, designating proxies, authorizing preparation and distribution of proxy material).*

- *Signatures of a majority of the Board of Directors must be obtained on the Form 10-K.*

Attached as Exhibit B is a schedule of a calendar-year company's recurring filing requirements and events.

Should the Company's securities become listed in the future on any additional securities exchanges, it will become subject to the rules of that exchange covering a number of additional filing and corporate governance requirements, which are not the subject matter of this memorandum.

B. Corporate Governance Requirements.

1. Ban on Loans to Directors and Officers.

The Sarbanes-Oxley Act of 2002 provides that it shall be unlawful for any issuer, directly or indirectly, including through any subsidiary, to extend or maintain credit, to arrange for the extension of credit, or to renew an extension of credit, in the form of a personal loan to or for any director or executive officer (or equivalent thereof) of that issuer.

2. Nasdaq Corporate Governance Rules.

The Nasdaq corporate governance rules are applicable to Nasdaq Global Select Market, Nasdaq Global Market and Nasdaq Capital Market companies. In summary form, these rules require that, among other things:

- *A majority of directors be independent, which independence standards have been tightened;*

- *Independent directors conduct separate regularly scheduled meetings, or "executive sessions," which are recommended to occur at least twice each year;*

- *The compensation of the CEO and other executive officers be determined (or recommended to the Board of Directors for determination) by a compensation committee comprised solely of independent directors that meet more stringent standards of independence;*

- *Director nominees be selected (or recommended for the Board of Directors' selection) either by a majority of the independent directors or a nominations committee comprised solely of independent directors;*

- *Audit committee members meet more stringent standards of independence and audit committees must assume increased powers and responsibilities;*

- *The audit committee or another independent body of the Board of Directors review and oversee all related person transactions;*

- *A code of conduct applicable to all directors, officers and employees must be adopted and disclosed, as well as a whistleblower policy and an executive compensation "claw back" policy; and*

- *Stockholder approval must be obtained of most equity compensation plans.*

Some additional details regarding certain of these requirements are as follows:

<u>Director independence requirements</u>: Nasdaq's rules require that a majority of the Board of Directors be comprised of "independent directors." The Board of Directors is required to make an affirmative determination that individuals serving as independent directors do not have a relationship with the Company that would impair their independence, which determinations must be disclosed in the Company's Exchange Act filings. The Nasdaq definition of "independent director" is quite stringent – independence is considered inconsistent with the director or a family member having employment or specified compensation arrangements with the Company, certain director/officer interlocks, association with the Company's outside auditor and other circumstances. The full definition of who is considered independent under Nasdaq rules is included as <u>Exhibit E</u>.

<u>Independent directors must conduct executive sessions</u>: Independent directors must have regularly scheduled meetings, or "executive sessions," at which only independent directors are present. These sessions, which Nasdaq contemplates will occur at least twice a year, are designed to encourage and enhance communication among independent directors.

<u>Determination of executive compensation by independent directors</u>: Nasdaq's rules currently require that the compensation of the CEO and all other executive officers of the Company must be determined, or recommended to the board for determination, by a compensation committee comprised solely of independent directors that has a charter. The Board of Directors must consider all factors relevant to determining if a director has a relationship to the company which is material to that director's ability to be independent from management in connection with the duties of a

compensation committee member, including certain fees paid to and affiliations of such director.

In addition, before selecting or receiving advice from a compensation consultant, legal counsel or other adviser, the compensation committee must take into consideration certain independence factors listed in Nasdaq rules.

Nomination of directors by independent nominations committee: Nasdaq's rules require that director nominees must either be selected, or recommended for the board's selection, either by (1) a majority of the independent directors or (2) a nominations committee comprised solely of independent directors. Each issuer must certify that it has adopted a formal, written charter or board resolution, as applicable, addressing the nominations process.

Heightened independence standards for audit committee membership: The Company is required by Nasdaq to certify that it has and will continue to have, an audit committee of at least three members, each of whom must:

- *in addition to meeting the general director independence requirements, (i) satisfy the criteria for independence set forth in Exchange Act Rule 10A-3 (i.e., not accept any consulting, advisory or other compensation from the issuer or be an "affiliated person" of the issuer or any subsidiary thereof) and (ii) not have participated in the preparation of financial statements of the Company at any time during the past three years; and*

- *be able to read and understand financial statements at the time of appointment to the audit committee, including the balance sheet, income statement and cash flow statement.*

Audit Committee Financial Expert: Each issuer must certify to Nasdaq that it has, and will continue to have, at least one member of the audit committee who has past employment experience in finance or accounting, requisite professional certification in accounting or any other comparable experience or background which results in the individual's financial sophistication, including being or having been a CEO, CFO or other senior officer with financial oversight responsibilities. The SEC also requires that the name of any audit committee financial expert (using a somewhat narrower definition than Nasdaq) be disclosed in each Form 10-K. The SEC does not require that a company have one, but it must disclose if it does not. We recommend having at least one member of the audit committee who qualifies not only under Nasdaq rules but under the SEC's definition.

Duties and responsibilities of audit committee: Sarbanes-Oxley, Exchange Act Rule 10A-3 and the Nasdaq governance rules prescribe certain duties and responsibilities of the audit committee. The audit committee (1) is responsible for selecting, determining the compensation of and monitoring the performance of the outside auditors; (2) must review the Company's annual and quarterly financial statements and financial disclosures and discuss them with management and the outside auditor—the review to include discussing (i) the Company's critical accounting policies; (ii) management judgments and accounting estimates; (iii) alternative GAAP treatments; (iv) off-balance sheet arrangements and (v) material communications between the outside auditor, such as the management letter; (3) must evaluate and oversee internal control over financial reporting and disclosure controls and procedures, and review management's and the outside auditor's reports on internal controls; and (4) establish complaint review procedures concerning accounting, internal accounting controls and auditing matters and establish a mechanism for anonymous submissions by employees of accounting or auditing concerns. Under SEC rules, the audit committee must pre-approve any non-audit service permitted to be provided by the outside auditor. There are also specified requirements for the audit committee charter, and specified cure periods for audit committee composition requirements.

Under Nasdaq rules and the Sarbanes-Oxley Act, the Company's audit committee must establish certain complaint procedures, sometimes called whistleblower procedures. We recommend these procedures be recorded in a written document and distributed to employees or posted in common areas. Typical procedures often include toll-free anonymous telephone hotlines, intranet complaint mailboxes and/or the opportunity to write to a designated recipient for complaints. The procedures usually provide for how complaints will be screened and investigated, retention of complaints, and how corrective action will be determined. The Company may not retaliate against persons who make complaints in good faith.

<u>Review of related person transactions</u>: The audit committee or another independent body of the Board of Directors must review and oversee all "related person transactions," as defined in SEC Regulation S-K, Item 404 (which broadly covers relationships between the Company and any director, executive officer, 5% stockholder or any of their immediate family members). Under SEC rules, the Company's policies and procedures regarding approval of related person transactions must be disclosed in the annual proxy statement.

<u>Codes of conduct must be adopted and disclosed</u>: Each issuer must adopt a code of ethics for the CEO and senior financial officers (a Sarbanes-Oxley and SEC requirement) and a code of business conduct and ethics for all directors, officers and employees (a Nasdaq requirement), which must be publicly available. Waivers to the code of conduct for executive officers or directors can only be granted by the issuer's board and must be disclosed, along with the reasons for the waiver, on Form 8-K or, if announced in advance, on the Company's website. The form of the code of ethics varies greatly from company to company.

<u>Policy for recovery of erroneously awarded compensation</u>: Each issuer must adopt a "claw back" policy applicable to executive officers requiring the recovery of erroneously awarded incentive-based compensation in the event of certain accounting restatements.

<u>Stockholder approval of equity compensation plans</u>: Stockholder approval is required of most equity compensation plans, including plans in which insiders do not participate, as well as repricings (if not provided for in the original plan) and material amendments that increase benefits to participants**.**

C. <u>Other Requirements.</u>

Because the Company's Common Stock is registered under the Exchange Act, the Company and its executive officers and directors are subject to additional requirements under the securities laws. The principal requirements are as follows:

1. Short-Swing Profit Recapture.

There are special provisions regarding so-called "short-swing profits" which apply to every director and officer of the Company, as well as any beneficial owner of more than 10% of the outstanding Common Stock (an "insider"). Subject to certain exceptions, Section 16(b) of the Exchange Act provides that any profit realized on a purchase and sale of stock beneficially owned by an insider within a six-month period is recoverable by the Company. Although it is the individual director or officer's responsibility to avoid short-swing profit recapture, because mistakes are so calamitous, most companies establish internal clearance procedures to minimize the chance of mistakes.

For this purpose, it does not matter whether the purchase or the sale occurs first. It is not necessary for the same shares to be involved in each of the matched transactions. Losses cannot be offset against gains. Transactions are generally paired so as to match the lowest purchase price and the highest sale price within a six-month period.

Good faith on the part of the insider is no defense. If the Company itself does not press a claim, a claim for recovery of the profit may be asserted by any stockholder for the benefit of the Company. Section 16 short-swing profit recapture is enforced by a group of securities lawyers who make their living by discovering and prosecuting short-swing trading violations.

There are many types of transactions which constitute a "purchase" or a "sale" for this purpose in addition to transactions, such as those on the open market, which are commonly thought to involve purchases or sales of securities. Transactions in derivatives may be deemed to involve purchases and sales of the underlying security. Changes to certain terms of a security may be considered to be a purchase or repurchase of the security. Corporate reorganizations and acquisitions may be deemed to involve "purchases" or "sales." Even the receipt of a stock option from the Company may be deemed a purchase unless it is approved in the proper manner in accordance with SEC rules.

"Beneficial" ownership for this purpose may include indirect ownership of stock through partnerships, corporations, trusts or estates. In some circumstances, stock held by close relatives of a person may be considered to be owned beneficially by such person, and a purchase (or sale) by one individual may be matchable with a sale (or purchase) by his or her close relative to produce a recoverable profit. The provisions also apply to stock registered in a street name.

The short-swing profit recapture provisions require a great deal of advance planning. In addition, the rules are complex, may vary in their impact on different individuals, and often change. Insiders should always check with counsel before engaging in transactions in the Company's securities. (See discussion of Forms 3, 4 and 5 under Section I.A.8 above.)

The Exchange Act also prohibits the Company's directors, officers and 10% stockholders from making "short sales" of any equity security of the Company (regardless of whether that class is itself registered). "Short sales" are sales of securities which the seller does not own at the time or, if owned, securities that will not be delivered currently.

A more detailed memorandum discussing certain of the obligations set forth above is attached hereto as Exhibit C.

2. Foreign Corrupt Practices Act.

The Foreign Corrupt Practices Act ("FCPA") imposes on public companies certain substantive requirements designed to maintain the basic integrity of their internal recordkeeping and control systems. Under the present requirements, it is possible to violate provisions of the FCPA by the lack of adequate records or controls, even if no improper transactions have occurred as a result of such deficiencies and even if published financial statements are not inaccurate. The Company should consult with its public accountants to be sure that its systems for maintaining books and records meet FCPA requirements.

Two additional rules have been adopted by the SEC to supplement the FCPA statutory provisions. One rule prohibits any person from directly or indirectly falsifying or causing to be falsified any book, record or account subject to the FCPA provisions. This rule applies, as indicated, to any person and is not limited to directors or officers. A second rule prohibits directors and officers from making, directly or indirectly, any materially false, misleading or incomplete statement to an accountant in connection with an audit or any filing with the SEC.

In addition to the foregoing, the FCPA contains other provisions which prohibit payments or promises under certain circumstances to foreign governments, foreign officials, or other persons known to be conduits to such recipients.

3. Disclosure Relating to Contests for Control.

The so-called Williams Act provisions of the Exchange Act (dealing with, among other things, the manner in which possible tender offers for the Company's registered securities may be made and the ways in which management may resist a tender offer) and the rules relating to proxy contests for control of a company are very complex and are not discussed in this memorandum. Generally, persons making tender offers or owning beneficially more than 5% percent of the outstanding stock are required to file certain disclosure documents under Section 14 of the Exchange Act, Schedules 13G or 13D, as discussed above, and to comply with other substantive requirements.

4. Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA").

In addition to the penalties imposed on persons who commit insider trading, insiders or "controlling persons" who fail to take adequate steps to prevent insider trading by those whom they control may be liable for harsh civil penalties under ITSFEA. Even where the controlling person does not participate in the trading violation or profit from it, he or she may be liable for criminal fines of up to $1 million and civil fines of three times the amount of the profit gained or loss avoided as a result of the controlled person's violation.

The term "controlling person" in the insider trading context is not limited to employers, but includes any person with power to influence or control the direction or the management, policies or activities of another person. For example, an officer or director of the Company may be considered a control person and thus become liable for insider trading committed by a person under his or her control.

Liability may occur if the controlling person:

- *fails to take appropriate action once aware of the fact, or recklessly disregards circumstances indicating a likelihood that a controlled person was engaged in or was about to engage in an ongoing insider trading violation; or*

- *fails to take appropriate action once aware of the fact, or recklessly disregards circumstances indicating a likelihood, that a control person was engaged in or was about to engage in a tipping violation.*

To impose liability, the SEC must establish that a controlling person objectively disregarded a risk that a controlled person was engaged in violations of the insider trading laws. Such "reckless disregard" must constitute a gross deviation from a reasonable person standard of care.

In response to the concerns raised by ITSFEA, public companies should establish written policies to curtail insider trading violations (which will also be filed as exhibits to Form 10-K).

5. Market Repurchases.

Repurchases by the Company of its outstanding Common Stock are subject to a series of technical restrictions under Regulation M, Rule 102 and Rule 10b-18 under the Exchange Act. The antifraud provisions under the Exchange Act apply to such purchases. Finally, disclosures of repurchases by the Company (including exercises of options paid for with Company stock) are required in Forms 10-K and 10-Q. Accordingly, counsel should be consulted in advance of any purchase of outstanding Common Stock by the Company, and internal clearance procedures should be followed in advance of any market purchase (or sales while the Company is making repurchases) by any officer or director.

II. OTHER NASDAQ REQUIREMENTS

A. Required Reports and Filings.

1. Notice Requirements.

In addition to the governance obligations discussed above, Nasdaq has certain notice requirements, including notices of: listing of additional shares; stock splits; dividends; change in number of outstanding shares (5% or more); and change in auditors, transfer agent or registrar. Each of these requires careful planning in order to meet applicable deadlines.

2. Disclosure Provisions.

Separate from the Company's SEC disclosure obligations, Nasdaq requires listed companies to establish and follow the practice of prompt and complete disclosure of material developments which, if known, might reasonably be expected to influence the market price of the Company's Common Stock. In particular, the Company should exercise great care in the preparation of press releases.

The Nasdaq requires Nasdaq-listed companies to disclose promptly to the public through any Regulation FD-compliant method (i.e., press release, Form 8-K or, subject to certain conditions, website posting) any material information which may affect the value of their securities or influence investors' decisions. The Company should electronically notify Nasdaq MarketWatch no later than 10 minutes before release of material news to the public. Pending public disclosure of material information, Nasdaq may impose a trading halt on the Company's securities. A trading halt normally lasts no longer than 30 minutes after the appearance of the news on wire services, but it may last longer if a determination is made that the news has not been adequately disseminated. If news is released after market close, companies should wait until at least 4:05 p.m. ET.

B. Maintenance Standards.

In order to remain listed, a company must continue to maintain certain listing standards. These standards relate to: stock price; stockholders' equity; market capitalization; total assets/revenues; public float; number of stockholders; number of market makers; and continued compliance with the governance requirements. See https://listingcenter.nasdaq.com/assets/continuedguide.pdf for a summary of these requirements.

III. INSIDE INFORMATION

A. Disclosure Requirements Concerning Inside Information: When, How and Where Information Should be Disclosed.

1. General.

In addition to the formal disclosure requirements imposed by the SEC forms discussed above, the Company is also subject to obligations relating to informal communications, such as press releases and communications with analysts and the news media. These obligations are governed by antifraud principles developed by the courts and by the rules of the SEC and Nasdaq. These rules are intended to keep the securities markets and stockholders informed of material developments, both favorable and unfavorable, concerning the Company's affairs without favoring any special person or group. Subject to the issues raised in the discussion below, the Company should establish and follow a general practice of prompt and complete disclosure of material developments. Care must be taken to avoid inaccurate, incomplete or misleading disclosure. In particular, the Company should exercise great care in the preparation of press releases and in disclosures to analysts and news reporters.

Generally, information is material if there is a substantial likelihood that a reasonable investor would consider the information important in deciding whether to buy, sell, or hold, or how to vote, his or her shares, or would view it as having significantly altered the "total mix" of available information concerning the Company. If information might reasonably be expected to affect the market price of the stock of the Company, it will generally meet this definition of materiality. Assessments of materiality will generally require a balancing of both the probability that an event will occur and the anticipated magnitude of the event if it does occur.

Ordinarily, immediate disclosure is required when information becomes material. Occasionally, however, circumstances arise in which the Company may temporarily refrain from publicly disclosing material information, provided that complete confidentiality is maintained. The circumstances where disclosure may be withheld are limited and constitute an infrequent exception to the normal requirement of immediate public disclosure.

One exception is when disclosure would prejudice the ability of the Company to pursue its corporate objectives, a delay in disclosure may often be justified until the danger has subsided. If the unfavorable result to the Company outweighs the undesirable consequences of nondisclosure, disclosure may properly be deferred to a more appropriate time. The foregoing refers only to general disclosure requirements; all material information must be contained in the Company's periodic reports under the Exchange Act regardless of these other factors if it is necessary to make the information required by such reports not misleading; it is understood, however, that the likelihood of an event happening is always a consideration in determining its materiality.

Another exception is when disclosure of uncertain developments may be premature when facts are in a state of flux. Matters that are or may develop into material corporate events also frequently require discussion and study by Company officials before final decisions can be made. Such premature disclosure could risk liability for misleading investors if an anticipated event does not occur. Also, successive announcements concerning the same subject but based on changing facts may confuse or mislead, rather than enlighten, the public. Consequently, if the situation is about to stabilize or resolve itself in the imminent future, it may be proper to withhold public announcement until a firm and complete announcement may be made, provided that the confidentiality of the matter can be maintained. Preparatory arrangements for acquisitions are an example of a type of a development where the risk of untimely and inadvertent disclosure of corporate plans is most likely to occur. Premature public announcement may properly be avoided only where it is possible to confine formal or informal discussions to a small group of the senior officers and their individual confidential advisers, but extreme care should be used to keep the information confidential.

Also, immediate public disclosure of material information should be made if the Company learns that insider trading has taken or is taking place while such material information is being temporarily withheld. The Company should be prepared to make an immediate public announcement if unusual market activity occurs, or when there has been a "leak," or selective disclosure of such information to outsiders. Whenever material information is being temporarily withheld, market activity in the Company's securities should be closely watched, since unusual market activity frequently signifies that a leak may have occurred.

Where the Company has made a previous public announcement which is still reasonably current and on which security holders could reasonably rely, but which is no longer accurate because of subsequent developments, or which was found to have been erroneous at the time of initial disclosure, or where there is a rumor or a market report circulating for which Company personnel had some responsibility, the Company may also be required to make corrective disclosure. It should be noted that confirmation of previously issued earnings guidance is itself material.

2. Responding to Inquiries.

The Company may occasionally receive inquiries from the press, financial analysts or Nasdaq seeking comment on rumors or unusual market activity, or an inquiry as to matters as to which the Company has determined disclosure is premature or otherwise inappropriate as discussed above. As a general matter, the Company should consistently respond to such inquiries with a "no comment" response, unless there is otherwise a duty to disclose as discussed above. The Company should use those two words – "no comment" -- and say nothing else except that it is the Company's policy (assuming that to be the case) not to comment on rumors and similar matters. Further responses to those inquiries raise several risks, including triggering a duty to update, and commenting incorrectly because of lack of complete information. Also, commenting on the accuracy of some rumors may give rise to an obligation to comment on all rumors, which could put the Company in a position of continuously having to make premature disclosure of material developments. A deceptive response should never be given in response to these inquiries.

3. Disclosure Procedures.

The normal method of publication of important corporate data is by means of a press release, though other methods may be utilized. Any release of information that could reasonably be expected to have an impact on the market for the Company's securities should be given to the wire services and the press "FOR IMMEDIATE RELEASE." News which ought to be the subject of immediate publicity must be released by the fastest available means.

Similarly, release of such news exclusively to the local press would not be sufficient for adequate and prompt disclosure to the investing public. To ensure adequate coverage, releases requiring immediate publicity should be given to Dow Jones & Company, Inc. and to other national newswire services -- Associated Press, Reuters, etc.

As stated above, Nasdaq recommends that companies notify it of the release of any material information no later than 10 minutes before its release to the public through the press. Notification must be electronically provided directly to the Nasdaq MarketWatch. The link to Nasdaq MarketWatch can be found here: https://www.nasdaq.net/ED/IssuerEntry.aspx.

The foregoing guidelines for distribution of releases should be regarded as minimum standards. Many companies may wish to give even broader prompt distribution to their releases. The Company should consider disseminating news in media in its major business locations, as well as newspapers and trade publications. Some of these media may refuse to publish information given by telephone until it has been confirmed in writing, or may require written confirmation after its publication.

Annual and quarterly earnings, dividend announcements, acquisitions, mergers, tender offers, stock splits and major management changes are examples of news items that should be handled on an immediate release basis. News of major contract awards, expansion plans and discoveries fall into the same category. Unfavorable news should be reported as promptly and candidly as favorable news. Reluctance or unwillingness to release a negative story or an attempt to disguise unfavorable news endangers management's reputation for integrity. (Any changes in accounting methods to mask such occurrences can have a similar long-term impact.) The following guidelines for overseeing the preparation of press releases and other public announcements should help to ensure that the content of such announcements will meet these requirements:

- *Every press release and other public announcement should be either prepared or reviewed both by an official of the Company having familiarity with the matter about which disclosure is to be made, and by the Company's Disclosure Committee or other designated officers. An exception to this procedure might apply to routine personnel announcements.*

- *Review by outside legal counsel of press releases and other public announcements is usually necessary, depending on the importance and complexity of the announcement.*

- *The Company should coordinate statements issued by marketing, public relations and investor relations personnel and agents to ensure consistency and accuracy and compliance with legal rules and company policies.*

In view of the importance of confidentiality and nondisclosure and the potential difficulties involved, a periodic review should be made of the manner in which confidential information is being handled within the Company. A periodic reminder notice of the Company's policy to those in sensitive areas might also be helpful.

Whenever the Company plans to issue a press release, counsel should be consulted beforehand as to whether or not the press release should be furnished to the SEC on Form 8-K. As discussed above, the scope of developments that are required to be reported on Form 8-K is expansive. Even where a Form 8-K is not technically required, good corporate practice may nevertheless dictate a filing. In addition, companies should consider posting the information on their websites simultaneously with its release to help establish their websites as recognized channels of distribution.

B. <u>Discussions with Analysts and Other Outside Persons by Management.</u>

As a general matter, the SEC and Nasdaq encourage corporations to seek formal and informal contacts with analysts and others, and generally to maintain an open-door policy. However, potential liability may arise from these communications in several ways. First, selective disclosure of internal information to one or more persons that is not provided to the market generally may be deemed a "tip," exposing the Company and the recipient to potential liability to investors who did not immediately receive the benefits of such information. Second, the information disclosed may, with hindsight, be deemed premature, false or misleading. Finally, the information disclosed may trigger a duty to make further public disclosure.

The basic rule for Company officers, when dealing with the press, financial analysts and other members of the investment community, is that no item of previously undisclosed material corporate information should be divulged or discussed unless and until it has been disclosed formally to the public by a general press release or Form 8-K. Often, in addition, a public access conference call is announced and scheduled with respect to such information and the information is posted on the company's website. The Company should carefully review and monitor statements made at both group meetings and "one-on-one" sessions to ensure that no selective disclosure of material inside information is made. Private "guidance" to a limited group of analysts is not permissible. In the event of an inadvertent disclosure, immediate public disclosure must be made.

Estimates of future earnings or revenues are particularly sensitive. Estimates should be phrased in ranges or in non-specific terms. The assumptions underlying such estimates should be discussed. If a Company forecast is disclosed, the Company should consider updating the forecast if and when it determines either that it will likely not be met, or that it will likely be exceeded.

Although selective disclosure of material inside information has always been illegal, the adoption by the SEC in 2000 of its Regulation FD nevertheless radically changed the relationship between public companies and analysts and the extent and timing of disclosure by public companies. Formerly, a "cat and mouse" game was played between the company and its analysts such that the company would "hint" about purportedly inside information without actually disclosing it. That practice has ended, and the corollary is that in order to feed the market's appetite for information, companies now disclose far more information than they once did, particularly "forward-looking information." When they disclose this information, they must take care to make sure it is simultaneously disclosed in a broad and concurrent manner. A number of techniques evolved to make sure the playing field is level. For example, the practice of openly webcasting a company's quarterly earnings teleconferences has developed, accompanied by posting on the company's website of financial and other information likely to be discussed during the teleconference and the publication of a press release containing all material information along with the furnishing of a Form 8-K.

Whenever any forward-looking statement such as an estimate of future earnings is made, whether written or oral, there are additional technical requirements that should be followed in order to protect the Company. Such statements should (i) be identified as a forward-looking statement, and (ii) be accompanied by meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the forward-looking statement. As an alternative to clause (ii) above, an oral forward-looking statement may be accompanied by a statement that (a) actual results might differ materially from those projected in the forward-looking statement, and (b) additional information concerning factors that could cause actual results to materially differ from those in such forward-looking statement is contained in a readily available written document, or portion thereof, such document or portions thereof being identified, and (c) such document or portions thereof actually satisfy the requirements of clause (ii) above. This litany should be recited before all conference calls or other public presentations.

The Company's management may frequently be asked by financial analysts to comment on estimates made by such analysts with respect to a future period or periods. Practice has changed in this regard, and such comments should not be made.

Corrections may be made to non-financial factual assumptions or other statements proposed to be made by analysts to the extent that such corrections do not involve any new material undisclosed information. However, prior financial information or projections should not be reaffirmed, even if they have not changed from prior public disclosure, in any nonpublic forum.

The authority to deal with the investment community in general should rest solely with one or more designated officers. Similarly, those designated officers should bear the responsibility, along with the Disclosure Committee, for reviewing texts or outlines of speeches in advance to ensure, among other things, that they are not misleading and do not contain any material undisclosed information. Formal procedures should be established by the Company to ensure that its officers, directors and employees are aware of the Company's disclosure policies and the need to preserve confidentiality for "Company Confidential" information. Generally, there should be limitations on the number and type of persons within the Company who are entitled to receive non-public material information.

A short memorandum of each meeting or conversation with financial analysts or other members of the investment community, stating the names of the persons involved, the date of the meeting or conversation and the items discussed should be prepared and retained for at least one year.

The requirement that disclosure be accurate and complete applies not only to press releases and statements to financial analysts, but to all Company statements that can reasonably be expected to reach investors. Such statements can often include speeches and statements touting new facilities and programs, even if the intended primary audience is not the securities markets.

C. Trading in the Company's Stock by Insiders on the Basis of Undisclosed Inside Information.

Section 10(b) of the Exchange Act (which is applicable to all purchases and sales of securities) prohibits trading by insiders of a company in that company's securities on the basis of undisclosed material information. For this purpose, insiders include the Company's employees, officers, directors, controlling stockholders, attorneys, accountants, investment bankers, public relations and advertising firms, other consultants and immediate family members of such persons. For example, if an "insider" who was aware of the fact that the Company was about to receive a major order which would have a material effect upon the financial position of the Company were to purchase securities of the Company before that information had been publicly disseminated, he or she would be in violation of this rule and would be subject to criminal prosecution as well as civil liability for any profits gained or deemed gains on the basis of that inside information.

Similarly, if such person were aware of adverse information concerning the Company (such as the loss of a large customer) which had not been made public, he or she would be precluded from selling securities of the Company until such information had been disseminated to the public. Around the time that material corporate developments are unfolding, insiders must be careful about the timing of their trades in the Company's stock.

Trading before the information is released may constitute fraud if it can be proven that the insider had an unfair informational advantage or made the transaction on the basis of the inside information. How soon after the release of material information insiders may begin to trade depends on how quickly and thoroughly the information is published by the news-wire services and the press.

In addition, insiders should refrain from trading even following dissemination of sensitive information until the public has had an opportunity to evaluate the information thoroughly. Where the impact of the information on investment decisions is readily understandable, as in the case of an earnings report, a 48-hour waiting period should be observed. A longer period may be observed if the information does not receive wide distribution or is complex in nature.

This prohibition on trading in securities of the Company applies not only to officers, directors and employees, but may in some situations also apply to any person who engages in any such trading on the basis of information that officers, directors, employees or other insiders have provided (these persons are called "Tippees"). Not only may a Tippee be found to have violated the law, but the person giving the tip may be held personally liable for any profits realized by his or her Tippee, even though he or she realized no personal profit. Accordingly, no transaction involving the Company's securities should be initiated by any person, whether a Company employee or not, who is in possession of inside material information, favorable or unfavorable.

Because the restrictions on insider trading are so stringent, and because potential liability is often asserted with the benefit of hindsight, the SEC adopted Rule 10b5-1. This rule creates a "safe harbor" for insider trading under specified circumstances. Rule 10b5-1 provides an affirmative defense to insider trading charges for trades made pursuant to a pre-existing plan, contract or instruction adopted while the person was not aware of material non-public information – a so-called "10b5-1 Plan." These plans are usually implemented through an insider's brokerage firm, but the Company should be involved in the process and kept up to date with respect to sales and prospective sales under the plan. Note that 10b5-1 Plans do not relieve an insider of his or her duty to file Form 4s or Form 144s or potential liability for short-swing profits.

IV. PROCEDURES FOR RESALES OF UNREGISTERED STOCK - RULE 144 AND RULE 701

Stock acquired in private transactions (i.e., all securities acquired by the Company's stockholders prior to its IPO or in private placements since then, including PIPE transactions where registration of re-sales has not yet occurred) are designated "restricted securities" under Rule 144 of the Securities Act. Restricted securities and other securities acquired in the open market by "controlling persons" (also called affiliates) of the Company (e.g., directors, executive officers, or 10% stockholders) are also deemed to be "restricted." Restricted securities cannot be sold via the public market except pursuant to Rule 144, Rule 701, a registration statement under the Securities Act or another exemption under the Securities Act.

Rule 144 is a "safe harbor" exemption. To utilize this safe harbor, a seller is prohibited from selling restricted securities until (1) the ninety-first day following the effective date of the Company's IPO; and (2) at least six months have elapsed since the specific shares were acquired from the Company or an affiliate of the Company and fully paid for. Such sales are subject to the quantitative and qualitative restrictions described below. Restricted securities held by persons other than affiliates for longer than one year, however, may be freely sold without restrictions. Similarly, unrestricted securities (i.e., registered securities acquired in the public market or pursuant to a registration statement) held by non-affiliates may be sold without restriction. Conversely, securities held by affiliates, whether restricted or unrestricted, and even if acquired in the public market, must be sold pursuant to Rule 144 or another exemption from registration. These restrictions on insiders are in addition to the short-swing profit and insider trading rules and company policies discussed above.

Securities held between six months and one year by non-affiliates may be sold freely, subject only to the Company being current in its reporting obligations to the SEC at the time of the sale (i.e., having filed its annual and quarterly reports over the last 12 months). Note that for former "shell" companies, the Company must continue to remain current even after one year, in order for Rule 144 to be available.

For affiliates, the qualitative restrictions generally require that the sale be handled as a routine open market brokerage transaction, although the seller also may deal directly with an over-the-counter market maker that deals as a principal for its own account rather than as a broker. Also, the Company must be current in its reporting obligations to the SEC at the time of the sale. The quantitative restrictions limit sales by the holder during each three-month period to an amount of securities equal to the greater of:

(1) one percent of the number of shares of Common Stock outstanding (based upon the Company's presently outstanding shares)(or, in the case of debt securities, ten percent of the applicable tranche); or

(2) the average reported weekly trading volume during the four calendar weeks preceding the date placing the order to sell.

Thus, the amount of shares permitted to be sold in any three-month period by each Rule 144 seller to whom the quantitative limitations apply would be at least one percent of the number of shares of Common Stock outstanding, but the amount which could be sold would be larger if the notice of sale is filed at a time when the weekly trading average during the preceding four calendar weeks exceeded that number.

Sales by closely-related persons, such as spouses, parents, minor children and their trusts, donors and donees, and pledgors and pledgees, must be combined, as specifically provided by Rule 144, in applying the quantitative limitation, with sales made by the actual Rule 144 seller.

The affiliate selling in reliance on Rule 144 must file a notice with the SEC on Form 144 if equity securities are sold. A copy of Form 144 can be found at www.sec.gov/about/forms/secforms.htm. The Form 144 must be filed with the SEC concurrently with placing the order for sale – that is, the Form 144 needs to be filed via EDGAR when the sell order is placed. There is an exemption from the filing requirement for transactions during any three-month period which do not exceed either 5,000 shares or an aggregate sale price of $50,000. If the sales are not completed within 90 days, a new Form 144 must be filed if additional sales are to be made. The filing of Form 144 is in addition to the requirement that officers, directors and 10% stockholders also file the requisite Form 4 under Section 16(a) of the Exchange Act within two business days (see discussion of Form 4 under Section I.A.8 above).

The foregoing is an extremely simplified summary of very complex and detailed provisions which may vary in their impact on individual stockholders. Well in advance of any proposed sale, a controlling person or holder of restricted securities should seek specific advice relating to his or her individual circumstances before committing to make any public sale of the Company's Common Stock or other securities.

The preceding discussion relates solely to an exemption from the registration requirements of the Securities Act for unregistered shares acquired in private transactions and to any shares acquired in public transactions by affiliates or "insiders" (that is, directors, officers or 10% stockholders). Whether or not registration is required with respect to any given proposed sale, the antifraud provisions remain applicable. Thus, even if Rule 144 provides an exemption from Securities Act registration, no stockholder should make any public sale of any stock if he or she is then aware of material information about the Company which has not yet been publicly disclosed. In connection with Rule 144 sales, an affiliate seller will normally have to furnish the broker with a completed questionnaire or representation letter. A broker's letter and a copy of the Form 144 intended to be used and some information from the selling affiliate stockholder must then be furnished to the Company's counsel, who is required, in turn, to furnish the transfer agent with an opinion letter authorizing the transfer. Generally, when Rule 144 sales are proposed, the Company's counsel will be required to furnish any necessary assistance.

An exemption from the registration requirements under Rule 144 does not have any bearing on the exposure to short-swing profit recapture under Section 16(b) of the Exchange Act, as discussed above. Thus, an exempt sale under Rule 144 may result in a short-swing profit recoverable by the Company under Section 16(b) if the sale occurs within six months before or after the seller's purchase of any Company stock at a lower price.

A registration statement on Form S-8 should be filed by the Company to cover the offer and sale of the Company's Common Stock pursuant to the Company's stock option plan. Pursuant to Rule 701, however, shares held by non-affiliates that were acquired pursuant to the exercise of stock options prior to the Company's IPO may generally be sold without restriction commencing on the ninety-first day following the effective date of the Company's IPO, subject to any applicable underwriters' lock-up agreements. The holding period of Rule 144 does not apply to any shares sold under Rule 701.

V. THE MOST PAINFUL MISTAKES BY PUBLIC COMPANIES AND THEIR OFFICERS

The breadth and complexity of the public securities laws and Nasdaq regulations, particularly after Sarbanes-Oxley, have made it extremely difficult for public company officers to keep in mind the myriad of requirements applicable to them. Counsel should be consulted in advance with respect to any significant activity or disclosure. If all of the rules are impossible to keep in mind all of the time, the following situations should always ring alarm bells:

- *When selling or buying stock, or engaging in a transaction of any kind relating to the Company's stock, make certain that there will be no "short-swing" violation.*

- *When selling or buying stock, make certain that counsel advises as to potential violations of the insider trading rules.*

- *Be circumspect at all times in talking about the Company to friends, acquaintances and, most importantly, investment professionals or the press.*

- *If you are contemplating an offering, make sure that no planned activities, such as scheduled press interviews or speeches, will implicate the "gun-jumping" rules that say that such activities may be an illegal offering of the securities before they are registered.*

- *Be sure to regularly check the Company's SEC reporting calendar to be sure deadlines and compliance requirements are met.*

Assume that anything of importance that happens to the Company and every material transaction may require immediate reporting under the new Form 8-K rules and/or a press release.

Public Company Compliance Manual

Exhibit A

Summary SEC Compliance Checklist

SUMMARY SEC COMPLIANCE CHECKLIST

The following checklist is meant to help organize and simplify the complicated task of ensuring that the Company has addressed the myriad of requirements described in the firm's Public Company Compliance Manual. The checklist is summary in nature and assumes that the reader has read and understands the manual. It does not explain the requirements but merely lists them. It is not intended to be a substitute for organizing a compliance program in consultation with counsel. The list assumes that the Company is a domestic U.S. issuer listed on Nasdaq, but attempts to identify the source of the requirements. The symbol ❐ indicates a Nasdaq requirement, the symbol ❍ indicates an SEC requirement and the symbol V indicates recommended compliance.

The list is divided into the following broad categories:

I. Board of Directors and Committee Requirements

II. Disclosure Requirements and Certifications

III. Insider Trading

IV. Miscellaneous

I. BOARD OF DIRECTORS AND COMMITTEE REQUIREMENTS

❐ Majority of the Board of Directors must be "independent." The Board must determine whether the Company meets the requirements. The Board's determination must be reported in the proxy statement. When entering into transactions or arrangements with Board members, determine whether they will affect independence. The Company's annual Directors and Officers Questionnaire should elicit information regarding independence.

❐ Independent directors must meet in executive session at least twice a year.

❍ Company loans to directors and executive officers are prohibited. All such loans must be repaid. Examine whether any other Company benefits constitute prohibited loans (e.g., personal use of firm credit cards, split dollar life insurance, prepaid signing bonuses, etc.).

❐ Board must establish an Audit Committee composed solely of at least three independent directors.

❐ Board must establish a Compensation Committee composed solely of at least two independent directors.

❐ Board may consider establishing an independent Nominating and Corporate Governance Committee. Disclosures will be necessary about the existence or non-existence of this committee.

❐ All committees should adopt charters and post them on Company website.

❐ Committee duties should be specifically delegated to the Committee by the Board pursuant to an appropriate Board resolution, and the Board should approve the various committee charters (in addition to adoption by the committees). The Board must authorize sufficient funding for the Audit Committee and Compensation Committee to perform their functions, including retaining independent advisers if they choose to do so.

❒❍ Board must adopt a Code of Ethics for the CEO and CFO and a Code of Conduct for all directors, officers and employees (these may be combined). Distribute the code(s) to the relevant persons. File with the SEC and/or post on the Company's website as required. File or post amendments and waivers for directors and executive officers.

❍ Company must disclose in proxy statement any process for security holders to send communications to the Board and any individual directors, as well as any screening process for such communications.

❍ Company must disclose in proxy statement (or website) any policy with regard to directors' attendance at Company annual meetings of stockholders.

❍ Company must disclose in proxy statement any policy for review, approval or ratification of related person transactions (and should formally adopt such a policy).

❒❍ Audit Committee Composition:

❍ Must be composed of three independent directors under stricter qualification guidelines.

❒ One member must be a "financial expert", as defined by Nasdaq rules. This must be certified to Nasdaq.

❍ Whether or not there is an "audit committee financial expert" under more stringent SEC rules and the identity of the expert must be disclosed in the proxy statement. An audit committee financial expert is not required under SEC rules, but if there isn't one, then that fact must be noted and explained in the Form 10-K.

❒❍ Audit Committee Duties:

- Select, determine the compensation of and monitor the performance of the outside auditors; review independence of outside auditors. (Note extensive rules on conflicts that could cause auditors to not be independent.)
- Pre-approve any "non-audit service" to be provided by the outside auditor, or specify detailed pre-approval procedures and delegation to a member. (Note that certain non-audit services are prohibited.) Details are to be disclosed in the proxy statement/annual report.
- Review the Company's annual and quarterly financial statements and financial disclosures and discuss them with management and the outside auditor—the review to include discussion of the auditor's report on specified items, such as critical accounting policies.
- Evaluate and oversee internal control over financial reporting and disclosure controls and procedures, and review management's and the outside auditor's reports on internal controls.
- Establish complaint review procedures concerning accounting, internal accounting controls and auditing matters and establish a mechanism for anonymous submissions by employees of accounting or auditing concerns.
- Prepare report to be included in the Company's proxy statement.

- The audit committee or another independent body of the Board of Directors must review and oversee all related person transactions.

❒ Compensation Committee Composition and Duties:

- The compensation committee should be comprised of at least two independent directors. The members should also satisfy the independence requirements under SEC Rule 16b-3.
- Must be composed of independent directors under stricter qualification guidelines.
- The compensation of the CEO and all other executive officers of the Company must be determined, or recommended to the Board for determination, by the compensation committee.
- The compensation committee must prepare its report to be included in the Company's proxy statement, which requires that it say whether it has reviewed "Compensation Discussion and Analysis."
- The compensation committee (or Board of Directors) must establish a "claw back" policy for excess incentive pay following certain accounting restatements.
- The compensation committee must consider potential conflicts of interest when engaging consultants and send questionnaires to compensation advisors to help the committee evaluate potential conflicts.

❒ Nominating and Corporate Governance Committee Duties:

- Director nominees must either be selected, or recommended for the Board's selection, either by a nominations committee comprised solely of independent directors or by a majority of the independent directors.

❍ Consider the following, which must be disclosed in the Company's proxy statement (or in some cases an explanation why these don't exist).

- Policy with regard to consideration of director candidates recommended by security holders.
- Procedures to be followed by security holders in recommending director candidates.
- Policy on director and employee hedging of Company stock.
- Specific, minimum qualifications that must be met by a nominating committee-recommended nominee; any specific qualities or skills necessary for a director to possess.
- Process for identifying and evaluating nominees and any differences in process for nominees recommended by security holders.
- Policy with regard to diversity (as defined by the Company since the SEC does not define) in the director nomination process.

II. DISCLOSURE REQUIREMENTS AND CERTIFICATIONS

V Ensure that the Company's CEO, CFO and General Counsel (if any), as well as the Company's Disclosure Committee, has received and read the Public Company Compliance Manual.

V The Board should appoint a Disclosure Committee to oversee the Company's disclosure policies and procedures. (Note that the SEC recommends that the committee include the Company's principal accounting officer, the general counsel or other senior legal officer (if any), the principal risk management officer (if any), the chief investor relations officer (if any), and, if appropriate for the size and complexity of the Company, senior representative of business units.)

V Ensure that the Disclosure Committee has read and understood the reporting calendar appended to the Public Company Compliance Manual. The Disclosure Committee and outside counsel should meet at the beginning of the fiscal year to review the reporting calendar.

V Ensure that the Disclosure Committee is aware of the scope of events that must be immediately reported on Form 8-K. Note the list of triggering events is expansive. Note also material officer compensation changes and issues may need to be reported.

V The Disclosure Committee's duties include: (i) ensuring that procedures are in place that are adequate to bring to the attention of the Disclosure Committee all reportable events; (ii) reviewing in advance all SEC filings; and (iii) reviewing in advance all press releases and other public disclosures. Consider the desirability of sub-certifications regarding SEC disclosures.

V Advise the Company's CEO and CFO of their responsibility for designing and monitoring the effectiveness of the Company's disclosure controls and procedures, including quarterly evaluations as of the end of each fiscal quarter.

V Ensure that controls are in place to limit the Company's interaction with the press and financial analysts to specified Company officers.

V Ensure that procedures are in place to properly announce and hold earnings conference calls and to promptly furnish all earnings press releases under cover of Form 8-K. Sequence: press release announcing results and access to earnings conference call, furnish Form 8-K, hold earnings conference call. Remind Company spokesman on necessity for disclaimer of "forward-looking statements" and website with reconciliations of non-GAAP financial measures.

V Periodically remind the CEO and CFO of their obligation to furnish compliance certifications in the Form 10-K and Forms 10-Q. Ensure that the CEO and CFO carefully read all SEC filings in advance of filing.

V Adopt a disclosure policy and social media policy.

V If not already in place, advise the Company of the SEC's requirements relating to internal control over financial reporting, including the requirement to establish and maintain a recognized control framework and to annually evaluate, and review quarterly, the adequacy of the internal controls. Advise of obligations to disclose material weaknesses or changes. Advise the CEO and CFO of the necessity and scope of their annual certifications relating to internal controls in the annual report.

❍ Note requirement of the necessity of outside auditor's attestation report on internal control over financial reporting and coordinate with auditors. Obtain Audit Committee pre-approval of auditor's services, as necessary.

V Ensure the Company is aware of the special SEC requirements and prohibitions relating to the use, announcement and publication of "non-GAAP" financial measures and the need to consult outside counsel with respect thereto.

❍ For accelerated filers, post or link to SEC filings on Company website as soon as practicable after filing.

III. INSIDER TRADING

V The Board of Directors must adopt an insider trading policy. The Board should consider adopting a policy regarding director and employee stock hedging.

V Train all employees on the insider trading policy, and ascertain that the Company has received back an acknowledgment form regarding receipt and review of the policy.

V Circulate to all directors and executive officers the memorandum contained in the Public Company Compliance Manual relating to the "short-swing profits" provisions of Section 16 of the Exchange Act.

V Determine that each officer and director has obtained the proper codes to permit electronic filing of the Forms 3 and 4.

V Ascertain that all Company directors and officer have filed with the SEC a Form 3 initial report of beneficial ownership, and ascertain that the directors and officers are aware of the two-day Form 4 filing requirement relating to other transactions.

V Establish a pre-clearance procedure with the Company's CFO or other senior officer requiring officers and directors to advise that officer in advance of their intention to trade in the Company's securities and the Company requirement for that officer to pre-clear any such trades.

V Obtain from each officer and director a power of attorney running to the Company's CFO and at least one other senior officer authorizing such persons to sign Forms 4 on behalf of the director or officer.

V Ascertain that the Company has procedures in place to post Form 3 and Form 4 filings on its website within one day after the SEC filing. Also, all SEC filings should be accessible from the Company's website.

V Communicate with counsel regarding procedures for Rule 144 opinions.

IV. MISCELLANEOUS

❒ All equity compensation plans, with very limited exceptions require stockholder approval. Material amendments to plans also require stockholder approval.

V Consider need to establish a Qualified Legal Compliance Committee to receive attorney reports of evidence of material violations of law.

V If necessary, adopt procedures regarding notifications of pension plan blackout periods.

V Consider creation of equity grant date/pricing policy.

V Consider establishing document retention/destruction program.

V Send out annual Directors and Officers questionnaires; adopt annual reporting time line.

V Consider establishing director/officer resignation policy to ensure Form 8-K compliance.

V Evaluate website for proxy rule technical requirements, anti-fraud issues, Regulation FD utility.

V Consider establishing shareholder engagement policy or committee.

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Public Company Compliance Manual

Exhibit B

Schedule of Recurring Filing Dates and Events

ANNUAL EXCHANGE ACT REPORTING CALENDAR
(SEC REPORTING AND ANNUAL STOCKHOLDERS MEETING)
(FOR NON-ACCELERATED FILERS)

The following sample annual Exchange Act reporting calendar and time and responsibility schedule provides a starting point for creating a checklist tailored to the Company. This schedule is meant as an aid in each of: (a) the Exchange Act requirements and other federal securities law requirements; (b) state law requirements (the calendar assumes a company incorporated in Delaware); (c) the company's charter, bylaws and other governance policies, and board committee charters; and (d) applicable Nasdaq standards. For simplicity, the calendar assumes a December 31 fiscal year end and a May 15th annual meeting date, and that no proposal to be considered at the annual meeting will require the filing of a preliminary proxy statement with the SEC. It also assumes the Company is <u>not an accelerated filer</u> – if it is an accelerated filer all activities relating to the Form 10-K and Forms 10-Q would be subject to shorter deadlines.

Date	Item	Resp.
January	Confirm whether the Company is a "smaller reporting company", "accelerated filer" or a "large accelerated filer" under SEC rules. Under SEC rules, a calendar year-end company must determine its status based in part on the company's public float as of the last business day of the second calendar quarter of the preceding fiscal year.	*Company*
January 1	Send reminder to officers and directors to give prior notice to and obtain preclearance from Company with respect to securities transactions to be made during next month *(Form 4s must be filed with SEC within two business days after the transaction requiring reporting on Form 4 is executed)*	*Company*
January 1 – 5	Meetings of internal reporting teams, including meeting of Disclosure Committee regarding, among other things: planning for Q4 and year-end earnings release; 10-K and proxy season reporting; disclosure/materiality issues relating to public disclosures; disclosure controls and procedures and internal control over financial reporting; and CEO/CFO certifications for 10-K	*Company*
January 2	Distribute D&O Questionnaires relating to annual proxy statement and 10-K, and Form 5s	*Company /Counsel*
January 7 – 14 *(assuming previous year's definitive annual proxy materials were sent out (or made electronically available) between March 28 and April 4)*	Final date Company may file with SEC no-action requests regarding Rule 14a-8 of the Exchange Act stockholder proposals to be included in annual proxy statement *(Rule 14a-8 of the Exchange Act requires filing no-action requests no later than 80 calendar days prior to filing of definitive proxy materials with SEC.)*	*Company /Counsel*
January 7 - 15	Begin closing books and compiling information for financial statements and footnotes for Q4 and year-end; coordinate with auditors regarding Q4 and year-end audit; draft financial statements and footnotes for Q4 and year-end; draft Q4 earnings release	*Company /Auditors*

Date	Item	Resp.
January 9 - 11	Notify insiders that insiders trading window opens for Q1 on January 26 *(Generally notify insiders two weeks before quarterly earnings release, although timing will depend on Company policy.)*	*Company*
January 10 - 24	Prepare first draft of annual proxy statement (including CD & A, if applicable), proxy card and notice (and, if applicable, notice of internet availability)	*Company*
	Determine drafter of performance graph for annual report, if applicable *(Often outside consultant will draft the performance graph with assistance from investor relations department.)*	*Company*
	Prepare first draft of Audit Committee Report *(Circulate to Audit Committee for review at next Audit Committee meeting.)*	*Company /Counsel*
	Prepare first draft of Compensation Committee Report, if applicable *(Circulate to Compensation Committee for review at next Compensation Committee meeting.)*	*Company /Counsel*
January 11-15 *(based on third week after end of quarter earnings release)*	Auditors review Q4 financial statements; auditors confirm numbers for Q4 press release	*Auditors*
	Distribute Q4 earnings release to counsel for review	*Company /Counsel*
January 12 – 17	Planning meeting to review and update business section and risk factors in 10-K	*Company /Counsel /Auditors*
	Determine location, time and date of annual meeting	*Company*
	Select printer(s) for proxy materials, 10-K and annual report to stockholders	*Company*
January 12 - February 5	Draft Part I of 10-K	*Company*
January 14	Query officers and directors regarding securities transactions made in prior reporting year for Form 5 filings relating to securities transactions not disclosed in Form 4 filings for prior reporting year	*Company*
January 14 - 15	**Disclosure Committee Meeting** regarding issues relating to Q4 earnings release and disclosure controls and procedures and internal control over financial reporting relating to 10-K and CEO/CFO certifications	*Company*
January 15	Distribute Q4 earnings release to Audit Committee for review	*Company*
	Determine if paper and envelopes should be ordered for proxy materials and annual report	*Company*

Date	Item	Resp.
January 16 *(pursuant to Rule 14a-4(c) of the Exchange Act and based on Company's bylaws advance notice provision providing that stockholder nominations and other proposals must be made no earlier than 120 days prior to the annual meeting date and no later than 90 days prior to the annual meeting date. Note: Company's bylaws provisions may provide for different period)*	First date for receipt of stockholder nominations for director and other stockholder proposals to be referenced in annual proxy statement pursuant to Company bylaws and Rule 14a-4(c) of the Exchange Act, and that may be brought before annual meeting	*Company /Counsel*
January 17 -18	Governance/Nominating Committee Meeting regarding: review and recommendation of slate of director nominees; review procedures and policies for stockholders recommendations of nominees and minimum criteria for directors	*Company*
January 17 - 18	**Audit Committee Meeting** regarding: • *Q4 and year-end financial results including Q4 earnings release* • *Receive independence disclosures from Auditors* • *Appointment of independent Auditors (including review and applicable preapproval and approval of services and fees).* • *Review of Disclosure Committee report relating to Q4 and year-end financial results* • *Executive sessions with auditors and management separately* *(Should be prior to earnings press release with ample time following meeting for legal and accounting review of release)*	*Company*

Date	Item	Resp.
January 17 - 18	**Board Meeting** approving, among other things: • *Annual meeting date and record date* • *Business to be transacted at the annual meeting* • *Inspectors of election with power of substitution* • *Officers to vote proxies with full power of substitution* • *Authorization for the preparation and distribution to stockholders of a notice of meeting, proxy card, proxy statement, annual report to stockholders, 10-K, and other materials as may be appropriate* • *Independence of independent directors* • *Slate of director nominees and recommendation of slate to stockholders* Executive session of independent directors	*Company*
January 17 – 18	Compensation Committee Meeting to approve bonuses	*Company*
January 21-31	Confirm that the date on which notice of the Company's annual meeting will be sent complies with requirements under State law and the Company's Charter and bylaws.	*Company*
	Confirm that the record date complies with requirements under State law and the Company's Charter and bylaws.	
January 23	Release Q4 numbers in earnings release; furnish Item 2.02 Form 8-K; conference call regarding Q4 and year-end financial results *(Make applicable financial information available on website and applicable report filing with SEC. Send required number of copies of press release materials to applicable exchange/market)*	*Company*
January 26	Insiders trading window opens for Q1 *(Often begins on second or third business day following quarterly earnings release, although timing will depend on Company policy)*	*Company*
January 30	Deadline for Real Estate Investment Trusts to send written demands to stockholders of record concerning their stock ownership. • Requirement applies to all classes of equity securities. The threshold for the demand varies, depending on how many record owners the REIT has: 5%+ holders if 2,000+ record stockholders; 1%+ if 200 to 2,000 holders; 0.5%+ if less than 200 holders.	

Date	Item	Resp.
January 31	Send notice to transfer agent, proxy solicitor and printer as to: • Proxy statement • Proxy card • Meeting Notice • Other proxy statement enclosures, such as Letter to Stockholders	*Company /Counsel*
*(*Pursuant to Rule 14a-16(d)(5), these must be ready to go "live" upon mailing the notice of internet availability.)*	Begin setting up (1) toll free number, email address and website for stockholders to request hard copies of proxy materials, Annual Report and form of proxy, and (2) mechanisms to exercise proxy via website if using e-proxy, or just website for access to proxy statement and Annual Report if not using e-proxy.*	*Company*
February 1	Send reminder to officers and directors to give prior notice to and obtain preclearance from Company with respect to securities transactions to be made during next month *(Form 4s must be filed with SEC within two business days after the transaction requiring reporting on Form 4 is executed)*	*Company*
February 3	D&O Questionnaires and information relating to Form 5s due at Company	*Company*
February 4	Prepare any required Form 5s and Schedule 13G amendments	*Company*
	Comments due on proxy statement and related documents, including Notice of Internet Availability, Compensation Committee Report and Audit Committee Report; make revisions to such documents	*Counsel/ Auditors*
February 5-6	**Disclosure Committee Meeting** regarding review of and issues relating to 10-K and proxy statement and disclosure controls and procedures and internal control over financial reporting relating to 10-K and proxy statement and CEO/CFO certifications	*Company*
February 7	Distribute complete 10-K to Legal Counsel and Auditors for initial review	*Company /Counsel /Auditors*
February 11	Comments due back to Company from Legal Counsel and Auditors on complete 10-K	*Counsel/ Auditors*
February 11 - 15	Senior management initial review of 10-K *(Start tracking all changes)*	*Company*
	Hold CEO/CFO 10-K certifications diligence session to, among other things, review Disclosure Committee report, review disclosure controls and procedures and internal control over financial reporting and conduct Q&A with business unit managers and other employees	
February 12 - 14	Request a listing of participants and an omnibus proxy from depositories holding securities of Company in common nominee name	*Company*

Date	Item	Resp.
February 14	Form 5s due at SEC regarding securities transactions made in prior reporting year relating to securities transactions not disclosed in Form 4 filings for prior reporting year; new Schedule 13G reports or amendments to existing Schedules 13G due at SEC *(Form 5s are required to be filed with SEC on or before the 45th day following the end of the reporting year; Schedule 13G reports or Schedule 13G amendments are required to be filed with SEC on or before 45th day following end of calendar year)*	*Company /Counsel*
February 14	Send notice to transfer agent, proxy solicitor and printer as to: • Proxy solicitation timetable • Record date • Annual meeting date • Name and address of financial printer • Request for stockholder lists as of the record date • Instructions as to ordering and printing of mailing and return envelopes and proxy cards, if applicable • Confirmation of availability of post office box for return of proxies, if applicable • Confirmation of quantities to be printed and mailed, if applicable • Material request cards to be sent to brokers	*Company*
	Notify applicable stock exchange or trading market of annual meeting date and record date soon after setting such dates, as required, and request confirmation of receipt	*Counsel*
	Test toll free number, email address and website for stockholders to request hard copies of proxy statement, Annual Report and form of proxy, as well as voting mechanisms.	*Company*
February 14 - 16	Communicate with banks, brokers, depositories, Broadridge, proxy agents and transfer agent, informing them of record date and the annual meeting date and whether or not they will be requested to forward proxy solicitation material to customers; enclose a materials request card *(SEC regulations require that these communications be done at least 20 business days prior to the record date – transfer agent or proxy solicitor will often assist with this)*	*Company*

Date	Item	Resp.
February 15 *(pursuant to Rule 14a-4(c) of the Exchange Act and based on a company's bylaws' advance notice provision providing that stockholder nominations and other proposals must be made no earlier than 120 days prior to the annual meeting date and no later than 90 days prior to the annual meeting date. <u>Note</u>: Company's bylaws provisions may provide for different period)*	Final date for receipt of stockholder nominations for director or other stockholder proposals to be referenced in annual proxy statement pursuant to Company bylaws and Rule 14a-4(c) of the Exchange Act, and that may be brought before annual meeting	*Company*
February 22	Distribute entire revised 10-K as per senior management's review to Legal Counsel and Auditors for review	*Company /Counsel /Auditors*
February 27	10-K comments due back to Company from Legal Counsel and Auditors	*Counsel/ Auditors*
February 27 - March 6	Company must provide stockholders, whose Rule 14a-8 stockholder proposals will be accompanied by a Board Opposition Statement in annual proxy statement, a copy of such Board Opposition Statement *(Generally must be sent to such stockholders 30 calendar days prior to distribution of definitive annual proxy materials)*	*Company /Counsel*
March 1	Assign annual meeting responsibilities for: • *Hosts (to direct seating, distribute and collect ballots)* • *Welcoming Committee (officers assigned to greet stockholders and guests)* • *Arbiters (legal or corporate secretary's staff who will handle difficult questions or complicated situations with regard to admission to the meeting)* • *Meeting transcript* • *Coordinate physical layout, audio/visual arrangements*	*Company*

Date	Item	Resp.
March 1	Insiders trading "blackout" period begins for Q1 *(Sometimes begins at start of last month of quarter, or two weeks prior to month end, although timing will depend on Company policy)*	*Company*
March 1	Send reminder to officers and directors to give prior notice to and obtain preclearance from Company with respect to securities transactions to be made during next month *(Form 4s must be filed with SEC within two business days after the transaction requiring reporting on Form 4 is executed)*	*Company*
March 1- 5	Prepare Board resolutions relating to annual meeting and reporting actions (that were not done at January meeting) for March 13 Board meeting, together with related Board committees' resolutions	*Company Counsel*
March 5 – 7	Distribute proxy materials (notice of internet availability, notice of meeting, proxy statement and proxy card) and final draft of 10-K and annual report (and in case of the Board, other relevant Board materials) to the Board and key senior management for review	*Company /Counsel /Auditors*
March 12 - 13	**Governance/Nominating Committee Meeting/ Conference Call** to: • *Recommend Board committee membership* • *Review committee charter and recommend any charter changes to Board*	*Company*
March 12 - 13	**Compensation Committee Meeting** to: • *Approve the Compensation Committee Report for inclusion in the proxy statement, if applicable* • *Review committee charter and recommend any charter changes to Board*	*Company*
March 12 - 13	**Audit Committee Meeting** to: • *Review final audited financial statements with the Company and Auditors, and recommend audited financials for inclusion in 10-K, and review other parts of 10-K* • *Review and approve Audit Committee Report for proxy statement* • *Discuss issues relating to disclosure and internal control over financial reporting, including Auditor and management reports (as applicable)* • *Review committee charter and recommend any charter changes to Board* • *Meet with auditors and management separately in executive session*	*Company*

Date	Item	Resp.
March 12 - 13	**Board Meeting** to, among other things, and as necessary: • *Approve proxy materials, annual report and 10-K in substantially the form presented to Board* • *Review and approve Audit Committee Report for proxy statement* • *Appoint Board committee members* • *Designate financial expert(s)* • *Approve any changes to Board committee charters* • *Approve other actions relating to annual meeting of stockholders and Board and annual reporting, not previously approved* Executive session	*Company*
	Obtain signature pages and Powers of Attorney from Board members for 10-K	*Company*
	Obtain consent from Auditors for filing as an exhibit to 10-K *(if Auditors' report will be incorporated into other filings)*	*Company /Auditors*
March 17 - 18	Send 10-K to printer	*Company /Printer*
March 17 – 18	Send annual proxy statement, notice of internet availability and proxy card drafts to printer; galleys reviewed in subsequent days	*Company /Printer*
	Send annual report (or 10-K wrap) to printer	*Company /Printer*
	Company to confirm timing with intermediaries for March 29 mailing date of notice of internet availability	*Company*
March 18 - 24	Blueline of proxy card, notice of internet availability and annual proxy statement reviewed, and comments, if any, to printer, and finalize proxy card, notice of internet availability and annual proxy statement and related materials	*Company /Counsel*
	Blueline of complete annual report delivered to Company for review	*Company /Printer*
	Transfer agent ships preaddressed proxy cards to printer	*Company /Transfer Agent*
March 23 - 28	Hold CEO/CFO 10-K certifications diligence session with Disclosure Committee to review 10-K, review disclosure controls and procedures and internal control over financial reporting and conduct Q&A with business unit managers and other employees; obtain 10-K CEO and CFO certifications and applicable subcertifications	*Company*

Date	Item	Resp.
March 24 - 29	Printer sends printed proxy materials to transfer agent and printer sends annual reports to transfer agent (Note: Because SEC allows proxy materials and annual reports to be posted on a website instead of mailing, subject to the mailing of a notice of internet availability, if company uses this model, it will need to adjust printing order)	*Company /Printer/ Transfer Agent*
March 26	**Record Date** *(Depending on Company bylaws and state law, generally between 10 days and 60 days prior to the annual meeting date)*	*Company*
March 22 *(at least five business days before mailing date)*	Company to send intermediaries completed quantities of necessary materials for March 29 mailing date of notice of internet availability.	
March 29	File 10-K with SEC *(SEC regulations require that 10-K be filed within 90 days of end of reporting year; however, is shorter for accelerated and large accelerated filers.)*	*Company*
March 29 - April 5	File definitive proxy materials with, and send copies of annual report to stockholders to, SEC *(Copies of the definitive proxy statement, notice of internet availability and proxy card and any other solicitation materials must be filed with SEC via EDGAR not later than the date such materials are first sent to stockholders.)* *(Seven hard copies of the annual report shall be mailed to SEC not later than the date on which the report is first sent or given to stockholders or the date on which preliminary copies (or definitive copies, if preliminary filing was not required) of the proxy materials are filed with SEC pursuant to Rule 14a-6(a), whichever date is later. Send required number of copies to applicable exchange/market)*	*Company /Counsel /Printer*
(if company is using notice and access model, must be at least 40 days before meeting, preferably 45 to leave a cushion)	Mail proxy cards and proxy statements (or mail notice of internet availability) to all stockholders; each proxy statement must be accompanied or preceded by an annual report to the stockholders which needs to include audited financial statements *(Written notice of any meeting shall be given not less than 10 nor more than 60 days before the date of the annual meeting to each stockholder entitled to vote at such meeting. Mailing/internet posting must occur at least 20 to 30 days before annual meeting to timely receive brokers' votes)* *(Notice of internet availability must be sent in paper unless stockholders have given affirmative consent to electronic delivery.)* *(Notice of internet availability may not be sent with the proxy card or any other stockholder communications and it may not include any additional information other than as required by state law).*	*Transfer Agent*
	Distribute proxy statement and annual report to option holders and other applicable benefit plan participants	*Company /Transfer Agent*

Date	Item	Resp.
(Pursuant to Rule 14a-16(b)(4), no later than the mailing date)	Proxy materials, including the Annual Report, must be posted on the Company's website (or that of a third party, but linking to EDGAR is insufficient) Proxy materials as posted must be in a format "convenient for both reading online and printing on paper" and must be easily searchable. This may require posting the proxy materials in more than one format. If a separate reader or plug-in is required, a link to the required software must be available on the same webpage. The website reference in the notice of internet availability must be to a specific page (not a home page), and must not be to the SEC's EDGAR website. If the Company is using notice and access model, the website must be ready to provide a means for stockholders to electronically execute a proxy.	*Company*
March 31	**End of Q1**	
April – 1	Send reminder to officers and directors to give prior notice to and obtain preclearance from Company with respect to securities transactions to be made during next month *(Form 4s must be filed with SEC within two business days after the transaction requiring reporting on Form 4 is executed)*	*Company*
April 8 – 10	Notify insiders that insiders trading window opens for Q2 on April 2 *(Generally notify insiders two weeks before quarterly earnings release, although timing will depend on Company policy)*	*Company*
(Pursuant to Rule 14a-16(h), if proxy card is sent within ten calendar days of sending notice of internet availability, it must be accompanied by the proxy statement and Annual Report. After ten calendar days, a proxy card may be sent to stockholders with only a notice of internet availability either electronically or as a hard copy.)	<u>Optional</u>: follow up proxy card may be sent to stockholders.	

Date	Item	Resp.
April 8 – 12	Complete annual meeting arrangements for preparation of: • *Ballots* • *Programs* • *Agenda* • *Meeting script* • *Q&A Book* • *Registration cards* • *Inspectors' reports*	*Company /Counsel*
April 8 – 12	Draft financial statements and footnotes for Q1	*Company /Auditors*
	Draft Q1 press release	*Company*
April 12 – 15	Auditors review Q1 financial statements; Auditors confirm numbers for Q1 release	*Auditors*
	Distribute Q1 press release to Legal Counsel for review	*Company /Counsel*
April 13 – 16	Prepare and submit periodic reports on proxy returns to management; determine if another proxy mailing is required	*Company /Transfer Agent/ Proxy Solicitor*
April 16	**Disclosure Committee Meeting** regarding issues relating to Q1 earnings release and disclosure controls and procedures and internal control over financial reporting relating to 10-Q for Q1 and CEO/CFO certifications	*Company*
April 17	Distribute Q1 press release to Audit Committee	*Company*
	Legal and accounting review of Q1 press release	*Counsel/ Auditors*
April 18	**Audit Committee Meeting/Conference Call** regarding Q1 financial results and review of Disclosure Committee report relating to Q1; executive sessions	*Company*
April 22	Release Q1 numbers in earnings release; furnish Form 8-K; conference call regarding Q1 financial results *(Make applicable financial information available on website and applicable report filing with SEC. Send required number of copies of press release materials to applicable exchange/market)*	*Company*
April 23	Deliver certificate of mailing of proxy materials or notice of internet availability, as applicable, to the Company.	*Transfer Agent*

Date	Item	Resp.
April 22 – 26	Review annual meeting script, speeches, audio/visual requirements, microphone requirements, catering arrangements, displays, parking requirements, security, procedure for checking in stockholders, coordination with news media and analysts, and availability of tape recorder or public stenographer (as desired)	*Company /Counsel*
April 23 - May 7	Draft and review 10-Q for Q1	*Company /Counsel /Auditors*
April 25	Insiders trading window opens for Q2 *(Often begins on second or third business day following quarterly earnings release, although timing will depend on Company policy)*	*Company*
April 25 - May 1	If desirable, begin contacting by telephone those major stockholders who have not responded to proxy solicitation	*Company /Transfer Agent/ Proxy Solicitor*
	Confirm attendance of Legal Counsel and Auditors at annual meeting	*Company*
May 1	Send reminder to officers and directors to give prior notice to and obtain preclearance from Company with respect to securities transactions to be made during next month *(Form 4s must be filed with SEC within two business days after the transaction requiring reporting on Form 4 is executed)*	*Company*
May 4	Have stockholder list open for examination *(The officer (usually the corporate secretary) in charge of the stock ledger shall prepare and make available, at least 10 days before every annual meeting, a complete list of the stockholders entitled to vote at such meeting. Such list shall be open to examination by any stockholder at the meeting place and during ordinary business hours, for at least 10 days prior to the meeting at corporate headquarters. It shall also be produced and kept at the time and place of the meeting during the whole time thereof. The specifics and availability will depend on Company bylaws and state requirements)*	*Company /Transfer Agent*
May 7 – 8	Hold CEO/CFO 10-Q certifications diligence session with Disclosure Committee to review 10-Q, review disclosure controls and procedures and internal control over financial reporting and conduct Q&A with business unit managers and other employees; obtain CEO and CFO certifications and applicable subcertifications	*Company*
May 9	Distribute 10-Q for Q1 to Audit Committee	*Company*
May 11	**Audit Committee Meeting/Conference Call** regarding 10-Q for Q1	*Company*
May 12 – 14	File 10-Q for Q1 with SEC *(SEC regulations require that 10-Q be filed within 45 days of end of reporting quarter; however, deadline is shorter for accelerated and large accelerated filers.)*	*Company*

Date	Item	Resp.
May 13	Prepare and review meeting admission guidelines, "disruptive person" guidelines, proxy acceptance guidelines and any other applicable guidelines for annual meeting	*Company /Counsel*
	Senior management briefing regarding annual meeting	*Company*
	Final revisions to management reports to be made at annual meeting and any accompanying slide presentations	*Company*
	Set up annual meeting headquarters at meeting site; rehearsals and final briefings	*Company*
May 14 -16	**Annual meeting of Board of Directors** to: • *Appoint officers* • *Reconstitute committees* • *Set Board compensation*	*Company*
	Annual Board Committee and Independent Director Meetings	*Company*
May 15	**Annual Meeting of Stockholders** *(elections inspector submits oath)* *(Notify applicable exchange/market of any changes in directors or executive officers as required)*	*Company /Transfer Agent*
May 19	File Form 8-K with annual meeting results (SEC rules require within 4 business days after meeting)	*Company /Counsel*
May 31	File Form SD (if necessary)	*Company /Counsel*
June 1	Insiders trading "blackout" period begins *(Sometimes begins at start of last month of quarter, or two weeks prior to month end, although timing will depend on Company policy)*	*Company*
June 1	Send reminder to officers and directors to give prior notice to and obtain preclearance from Company with respect to securities transactions to be made during next month *(Form 4s must be filed with SEC within two business days after the transaction requiring reporting on Form 4 is executed)*	*Company*
June 30	End of Q2	
July 1	Send reminder to officers and directors to give prior notice to and obtain preclearance from Company with respect to securities transactions to be made during next month *(Form 4s must be filed with SEC within two business days after the transaction requiring reporting on Form 4 is executed)*	*Company*

Date	Item	Resp.
July 8 -10	Notify insiders that insiders trading window opens for Q3 on July 25 *(Generally notify insiders two weeks before quarterly earnings release, although timing will depend on Company policy)*	*Company*
July 8 -12	Draft financial statements and footnotes for Q2	*Company /Auditors*
	Draft Q2 press release	*Company /Counsel*
July 12 -14	Auditors review Q2 financial statements; Auditors confirm numbers for Q2 earnings release	*Auditors*
	Distribute press release to counsel for review	*Company /Counsel*
July 15	**Disclosure Committee Meeting** regarding issues relating to Q2 earnings release and disclosure controls and procedures and internal control over financial reporting relating to 10-Q for Q2 and CEO/CFO certifications	*Company*
July 16	Distribute Q2 press release to Audit Committee	*Company*
	Legal and accounting review of Q2 earnings release	*Counsel/ Auditors*
July 18 – 20	**Audit Committee Meeting/Conference Call** regarding Q2 financial results and review of Disclosure Committee report relating to Q2; executive session	*Company*
July 19	**Board Meeting**; executive session	*Company*
July 22 – 23	Release Q2 numbers in earnings release; furnish Form 8-K; conference call regarding Q2 financial results *(Make applicable financial information available on Website and applicable report filing with SEC. Send required number of copies of press release materials to applicable exchange/market)*	*Company*
July 24 - August 7	Draft and review 10-Q for Q2	*Company /Counsel /Auditors*
July 25 – 26	Insiders trading window opens for Q3 *(Often begins on second or third business day following quarterly earnings release, although timing will depend on Company policy)*	*Company*
August 1	Send reminder to officers and directors to give prior notice to and obtain preclearance from Company with respect to securities transactions to be made during next month *(Form 4s must be filed with SEC within two business days after the transaction requiring reporting on Form 4 is executed)*	*Company*

Date	Item	Resp.
August 7-8	Hold CEO/CFO 10-Q certifications diligence session with Disclosure Committee to review 10-Q, review disclosure controls and procedures and internal control over financial reporting and conduct Q&A with business unit managers and other employees; obtain CEO and CFO certifications and applicable subcertifications	*Company*
August 9	Distribute 10-Q for Q2 to Audit Committee	*Company*
August 11	**Audit Committee Meeting/Conference Call** regarding 10-Q for Q2	*Company*
August 12 -14	File 10-Q (including, if necessary, notice requirements regarding stockholder proposals for next year's proxy, and stockholder election results) for Q2 with SEC *(SEC regulations require that 10-Q be filed within 45 days of end of reporting quarter; however, deadline is shorter for accelerated and large accelerated filers.)*	*Company*
September 1	Insiders trading "blackout" period begins *(Sometimes begins at start of last month of quarter, or two weeks prior to month end, although timing will depend on Company policy)*	*Company*
September 1	Send reminder to officers and directors to give prior notice to and obtain preclearance from Company with respect to securities transactions to be made during next month *(Form 4s must-be filed with SEC within two business days after the transaction requiring reporting on Form 4 is executed)*	*Company*
September 20	**Board Meeting**	*Company*
September 30	End of Q3	
October 1	Send reminder to officers and directors to give prior notice to and obtain preclearance from Company with respect to securities transactions to be made during next month *(Form 4s must be filed with SEC within two business days after the transaction requiring reporting on Form 4 is executed)*	*Company*
October 8 -10	Notify insiders that insiders trading window opens for Q4 on October 25 *(Generally notify insiders two weeks before quarterly earnings release, although timing will depend on Company policy)*	*Company*
October 8 -12	Draft financial statements and footnotes for Q3	*Company /Auditors*
	Draft Q3 press release	*Company*
October 12 -14	Auditors review Q3 financial statements; Auditors confirm numbers for Q3 earnings release	*Auditors*
	Distribute Q3 earnings release to Legal Counsel for review	*Company /Counsel*

Date	Item	Resp.
October 15	**Disclosure Committee Meeting** regarding issues relating to Q3 earnings release and disclosure controls and procedures and internal control over financial reporting relating to 10-Q for Q3 and CEO/CFO certifications	*Company*
October 16	Distribute Q3 earnings release to Audit Committee	*Company*
	Legal and accounting review of Q3 earnings release	*Counsel/ Auditors*
October 17	**Audit Committee Meeting/Conference Call** regarding Q3 financial results and review of Disclosure Committee report relating to Q3; executive sessions	*Company*
October 22	Release Q3 numbers in earnings release; furnish Form 8-K; conference call regarding Q3 financial results *(Make applicable financial information available on Website and applicable report filing with SEC. Send required number of copies of press release materials to applicable exchange/market)*	*Company*
October 23 - November 7	Draft and review 10-Q for Q3	*Company /Counsel /Auditors*
October 25	Insiders trading window opens for Q4 *(Often begins on second or third business day following quarterly earnings release, although timing will depend on Company policy)*	*Company*
November-December	If distributing proxy materials using notice and access model: • *Review SEC confidentiality requirements applicable to website anonymity and use of electronic email addresses;* • *Review website bandwidth, security and related issues;* • *Consider "user friendliness" design issues for website and documents to be posted on the website; and* • *Evaluate voting considerations, including retail vs. institutional ownership, past voting patterns and participation rates, and potential effects on quorum and on any required majority votes.* Review requirements for contents and delivery method for notice of the annual meeting under state corporate law and the company's charter and bylaws.	

Date	Item	Resp.
November 1	Send reminder to officers and directors to give prior notice to and obtain preclearance from Company with respect to securities transactions to be made during next month • *(Form 4s must be filed with SEC within two business days after the transaction requiring reporting on Form 4 is executed)*	*Company*
November 8 - 9	Hold CEO/CFO 10-Q certifications diligence session with Disclosure Committee to review 10-Q, review disclosure controls and procedures and internal control over financial reporting and conduct Q&A with business unit managers and other employees; obtain CEO and CFO certifications and applicable subcertifications	*Company*
November 9	Distribute 10-Q for Q3 to Audit Committee	*Company*
November 11	**Audit Committee Meeting/Conference Call** regarding 10-Q for Q3	*Company*
November 11	**Compensation Committee Meeting** to determine or recommend annual CEO and executive officer compensation for the coming year	
November 12 -14	File 10-Q for Q3 with SEC *(SEC regulations require that 10-Q be filed within 45 days of reporting quarter; however, deadline is shorter for accelerated and large accelerated filers.)*	*Company*
November 14	**Board Meeting**; Executive Session	*Company*
November 29 - December 6 *(assuming previous years' definitive annual proxy materials were sent out between March 28 and April 4)*	Final date for receipt of Rule 14a-8 stockholder proposals to be included in annual meeting proxy statement for upcoming year *(Rule 14a-8 of the Exchange Act generally requires that stockholder proposals be received by Company at corporate headquarters no later than 120 days prior to the date of distribution of previous year's proxy materials if upcoming annual meeting is scheduled to be held within 30 days of previous year's annual meeting; if not, then the last day for 14a-8 stockholder proposals is a "reasonable" time before printing proxy materials for upcoming annual meeting)*	*Company*

Date	Item	Resp.
December or early January	Determine whether the Company or any intermediaries will use SEC “householding” rules. Confirm that the following conditions will be satisfied (state laws may impose additional conditions on householding): • Express or implied consent requirements of SEC rules; • State law, charter and by-law requirements concerning giving written notice of stockholder meetings to each stockholder; • Each record stockholder will receive a separate proxy card, and that each beneficial holder will receive a separate form of voting instructions; and The annual report and proxy statement will accompany or precede the proxy cards and/or forms of voting instructions.	
December 1	• Send out time and responsibility schedule for next year’s annual proxy statement and annual reporting season to management, Legal Counsel and Auditors	*Company*
December 1	Insiders trading “blackout” period begins *(Sometimes begins at start of last month of quarter, or two weeks prior to month end, although timing will depend on Company policy)*	*Company*
December 31	Send reminder to officers and directors to give prior notice to and obtain preclearance from Company with respect to securities transactions to be made during next month *(Form 4s must be filed with SEC within two business days after the transaction requiring reporting on Form 4 is executed)*	*Company*
December 31	**End of Q4 and reporting year**	

SULLIVAN & WORCESTER

Public Company Compliance Manual

Exhibit C

Memorandum on Insider Reporting and Liability for Short-Swing Profits

MEMORANDUM

To: Directors, Executive Officers and 10% Stockholders of Xyz, Inc.

From:

Date:

Re: Insider Reporting and Liability for Short-Swing Trading

All directors, executive officers and 10% stockholders ("Insiders") of Xyz, Inc. ("the "Company") are subject to the reporting and insider trading provisions of Section 16 ("Section 16") of the Securities Exchange Act of 1934 (the "Exchange Act"). This memorandum is intended to explain certain of your obligations under Section 16.

1. Overview.

Section 16 is intended to prevent unfair use of inside information and discourage speculative trading by Insiders by requiring them to report holdings and transactions in the Company's securities (under Section 16(a)). In addition, Section 16 also requires Insiders to pay over to the Company any "profits" realized from any purchase and sale (or any sale and purchase) of Company securities within a six-month period (under Section 16(b)). Under Section 16(c), Insiders are precluded from making short sales (sales of shares they do not own at the time of the sale) of the Company's securities.

Federal legislation has given the Securities and Exchange Commission (the "SEC") and courts far greater powers in sanctioning and imposing penalties for violations of the federal securities laws. In addition, the SEC requires that the Company disclose in its annual proxy statement the names of Insiders who have failed to make required Section 16 filings on a timely basis, and also to note the existence of such disclosure on the cover of its annual report on Form 10-K.

The rules under Section 16 are complex and contain a number of "gray" areas and potential traps for the unwary. You should consult with counsel before engaging in any transactions in the Company's securities, particularly transactions involving "derivative" securities (such as options or warrants).

2. Your Reporting Obligations.

Section 16 requires you to file an initial statement of beneficial ownership of the Company's securities on Form 3 at the time that you become subject to Section 16 (when you become an Insider), as well as periodic statements reflecting changes in beneficial ownership of the Company's securities. Most changes in beneficial ownership (as defined below) must be reported. When you report and on what form you report depends on the type of transaction, and sometimes on whether or not you wish to report earlier than required. There are several relevant times when filings are required:

(a) An initial statement of beneficial ownership of equity securities on Form 3 must be filed by the date that the registration statement for the Company's initial public offering becomes effective or, thereafter, within 10 days of the date a person becomes an Insider;

(b) most transactions <u>must</u> be reported on a Form 4 by the end (i.e., before 10 p.m. EST) of the 2^{nd} business day following the date of the transaction;

(c) all other reportable transactions and holdings <u>must</u> be reported on Form 5 within 45 days of the Company's fiscal year end, <u>unless</u> you voluntarily report the transaction or holding earlier on Form 4.

Certain transactions need not be separately reported (although their effect on an Insider's holdings will ultimately be reflected).

Most transactions trigger an immediate Form 4 filing requirement, including generally many which may be matched to result in short-swing liability under Section 16(b). For example, the exercise of a stock option is, in most cases, exempt from Section 16(b) matching and therefore the exercise is not a transaction that may be matched against another transaction. However, because the decision by an Insider to exercise an option is deemed to be of interest to the marketplace, option exercises trigger an immediate filing on Form 4. As a practical matter, this means that only very small acquisitions and a few other specific transactions are reportable on Form 5.

Attached to this memo is a table of typical transactions you may encounter and when you must report them. Even though reporting of some transactions may be deferred, it is advisable to report all reportable transactions on a Form 4 <u>at the time of the transaction</u> because (i) it is possible that you may not recall the transaction when it is time to file the Form 5, and (ii) earlier reports may be required due to the timing of events. If you file a Form 4 for every reportable transaction, you will not be required to file a Form 5 at the end of the Company's fiscal year. The table is intended to assist you with your preparation of Forms 4 and 5, but is not in any way intended to replace the advice of your personal attorney or advisor, with whom you should always consult before making any conclusions regarding your reporting obligations arising out of <u>any</u> transaction, including those listed in the chart.

3. <u>How to Complete and File Forms</u>.

(a) <u>Completion of Forms</u>. When you fill out the forms, read the instructions carefully to be sure that you have provided all of the information required, including the proper transaction codes.

For purposes of the information as to holdings and transactions required by the forms, your "beneficial ownership" in equity securities is defined to mean a direct or indirect pecuniary interest (i.e., ability to profit from purchases and sales) in securities. In determining the existence of a pecuniary interest which must be reported, there is a presumption that a person has a pecuniary interest in securities held by members of his or her immediate family if they share the same household. You are generally deemed to have a pecuniary interest in any shares held by your children through college and until they set up independent households. A person also is deemed to have a pecuniary interest in any securities that can be acquired on the exercise or conversion of any options, warrants, convertible securities or other "derivative securities," whether or not presently exercisable, held by them. A person may also be held to be the beneficial owner of securities registered in the name of a partnership, corporation, trust or other entity over which he or she has a controlling influence. Finally, special rules exist for fiduciaries and beneficiaries of trusts and general partners of partnerships.

Forms 4 and 5 contain an "exit" box, which may be checked when you cease to be an Insider. Note, however, that you would still be required to report a transaction after you cease to be an executive officer or director, if the transaction (such as a sale) "matches" with any transaction (such as a non-exempt purchase) while you were an executive officer or director.

(b) Electronic Filing and Website Posting. In order to file a Form 3, 4 or 5 with the SEC, you must have "CIK" and "CCC" numbers which are used to access the SEC's "EDGAR" system. These numbers can be obtained, usually within one or two days by electronically filing a short application with the SEC. If you have questions about obtaining EDGAR identification numbers, the Company or its counsel can assist you or go to the SEC's EDGAR filer management website at www. filermanagement.edgarfiling.sec.gov. These numbers are unique to the individual filer and can be used to make filings by an Insider with respect to other companies for which he or she may serve as an insider. Each Insider should check with any such other companies to make sure they don't already have EDGAR identification numbers.

Once an Insider has EDGAR identification numbers, he or she must electronically file each Form 3, 4 or 5 through the SEC's website (see www.onlineforms.edgarfiling.sec.gov), with the Company's or counsel's assistance, or through a third party service provider that handles Section 16 filings. Electronic SEC filing will also be deemed delivery to Nasdaq.

A manually executed hard copy of the filing must be retained for at least five years. In addition, simultaneously with filing, a copy must be sent to the Company. The Company is required to post all Section 16 filings on its website by the business day after filing.

(c) Disclaimer of Beneficial Ownership. When there is doubt as to your beneficial ownership of securities, you should report such securities as being beneficially owned. Such report will not amount to an admission of beneficial ownership if accompanied by a disclaimer of beneficial ownership. If you wish to disclaim beneficial ownership of securities, you should make the disclaimer on your Form 3 and also in any Form 4 or 5 (discussed below) which you may subsequently file. An appropriate form of disclaimer is as follows:

> The undersigned disclaims beneficial ownership of the securities indicated, and the reporting herein of such securities shall not be construed as an admission that the undersigned is the beneficial owner thereof for purposes of Section 16 or for any other purpose.

(d) When Due. Form 3s are due on the date the Company goes public or, thereafter, within 10 days of the date a person becomes an Insider.

Forms 4 (other than voluntary filings) must be filed on or before 10 p.m. EST on the 2nd business day after the date on which the reportable transaction occurred. A voluntary Form 4 may be filed at any time. In certain limited circumstances where an Insider would otherwise have not been aware of the trade (such as under a so-called "10b5-1" trading plan or under a benefit plan where an administrator executes the transaction), additional time (up to 3 days) may be available.

Form 5 is due within 45 days after the end of the Company's fiscal year. If any transactions should have been reported earlier, the delinquent reports of those transactions must be included in the Form 5 and a special box must be checked indicating that reporting delinquencies have occurred. If all holdings and transactions have previously been reported, no Form 5 need be filed.

If the due date falls on a weekend or a national holiday, you have until the next business day to get the form to the SEC.

(e) Power of Attorney. A form may be executed using a power of attorney provided that a copy of the power of attorney is filed with the SEC (and a manually signed copy is retained for 5 years).

4. The Importance of Accurate and Timely Reporting.

Correct and timely reporting to the SEC is imperative. The Company is required each year to disclose to the public in its proxy statement the name of any Insider who has not met his or her SEC reporting obligations in a timely manner, even if a report was late by just one day. This would be embarrassing to you and the Company and possibly costly to you. The SEC has expressed its intention to use this information to take action under federal legislation that gives the SEC and courts new sanctions for violations of federal securities laws.

5. Avoiding Short-Swing Liability.

In addition to making complete and timely reports under Section 16(a), you must also be careful to plan transactions to avoid short-swing liability under Section 16(b). Section 16(b) is designed to discourage trading on inside information, and presumes that certain people inevitably benefit from their "insider" status. Under Section 16(b), any purchase and sale, or sale and purchase, of a company's securities by a company Insider made during any given six-month period will be matched. Any "profit", whether inadvertent or intentional, realized by matching a purchase and sale within a six-month period is recoverable by the Company. If the Company fails to recover such profit, any stockholder of the Company may sue to recover it on behalf of the Company. Forms 3, 4 and 5 filed with the SEC are publicly available on the internet and are routinely monitored by attorneys who make their living by threatening to file Section 16(b) suits on behalf of stockholders. In the event of a violation of Section 16(b) by an Insider, these attorneys are generally able to compel the Company and/or the offending Insider to pay their fees and expenses if the Company had not acted to obtain restitution of the deemed "profit" from the Insider prior to receiving a communication from the attorney.

Unlike other provisions in the federal securities laws, intent to take unfair advantage of non-public information is not required for recovery under Section 16(b). In other words, transactions in the Company's securities within six months of one another can lead to recovery of profits irrespective of the reasons for or purposes of the transaction.

Except in the case of options and other derivative securities (for which there is a special rule for calculating profits), transactions are paired with mechanical rigidity so as to match the lowest purchase price with the highest sale price, thus squeezing out the maximum amount of "profit." Thus, although you may have realized an economic loss, you may be treated for Section 16(b) purposes as having realized a "profit."

Attached to this memo is a table of typical transactions and how they would be treated. It does not matter for Section 16(b) purposes whether the purchase or sale comes first. It makes no difference that the particular shares sold happen to be shares you have held more than six months, since it is not necessary for the same shares to be involved in each of the "matched" transactions. The rules apply not only to your individual transactions but also to transactions engaged in by others if you are deemed to have a pecuniary interest in their shares. Thus, a purchase by you could be matched with a sale of shares by your spouse. Public and private transactions also can be matched. In the case of officers and directors, transactions occurring while you are an Insider may be matched with transactions after you cease to be an Insider. A 10% beneficial owner must, however, be a 10% beneficial owner at both the time of purchase and the time of sale to trigger Section 16(b) matching liability.

The purchase and sale of securities that are convertible into or exercisable for the purchase of shares of Common Stock may be matched either against the sale and purchase of other securities which are so convertible or the sale and purchase of shares of Common Stock. For example, a sale of warrants to acquire Common Stock might be matched either against a purchase of convertible securities or a purchase of Common Stock within six months before or after such sale. The acquisition of warrants or convertible securities will also generally be treated as an acquisition of the underlying equity security, but the exercise of such warrant or conversion of such convertible securities will not be treated as a matchable purchase.

Any acquisition by an officer or director (but not a 10% holder) from the Company, or any disposition by an officer or director to the Company, is exempt from matching if approved in advance by the Board of Directors or a properly constituted committee of the Board. Thus, neither the grant nor the exercise of an option issued under the Company's stock option plans will generally be treated as a matchable "purchase" for purposes of Section 16(b). Acquisitions of Common Stock under the Company's employee stock purchase plans will not generally be treated as matchable purchases for purposes of Section 16(b). If the officer or director elects to pay the exercise price (and/or any tax withholding obligations) by withholding option shares or tendering previously held shares to the Company, the disposition of such shares will likewise be exempt from matching if properly approved in advance. However, the sale of shares by a broker to pay the exercise price and/or tax withholding would be treated as a matchable "sale" for purposes of Section 16(b).

In short, Section 16 contains many traps for the unwary. Thus, it is imperative that you consult with a knowledgeable adviser before executing any transactions.

6. Short Sales.

In general, Section 16(c) of the Exchange Act makes it unlawful for an Insider to make "short sales" or "sales against the box" when the securities sold are not delivered within the time periods set forth in Section 16(c). A "short sale" is any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. A "sale against the box" is the type of short sale in which the seller actually owns sufficient shares to make delivery but chooses to borrow shares to cover the sale. The seller subsequently can either buy securities or use his own securities to repay the lender to complete the transaction.

7. Avoiding Liability Under Other Insider Trading Rules.

As discussed above, Section 16 is based on a presumption that certain people inevitably benefit from their access to inside information. Insiders should not forget that the Securities Exchange Act also prohibits the actual use of inside information, whether or not this involves six-month matching of purchase and sale transactions. In addition to the direct liability of Insiders for insider trading violations, companies and their directors and officers may also be legally liable for failing to prevent such violations by company personnel. In light of this potential indirect liability, and the severity of possible sanctions both to you and to the Company for insider trading violations, the Company's policies and procedures set forth in its insider trading policy statement should be observed at all times.

8. Conclusion.

Remember that it is your responsibility to meet Section 16(a) reporting obligations and to avoid Section 16(b) short-swing profit liability. You should obtain assistance from your personal attorney or adviser prior to executing any transactions to avoid liability, determine what your reporting obligations are and to complete the necessary filings. While the primary responsibility for Section 16 compliance remains with you, your compliance is extremely important to the Company. The Company's Section 16 compliance officer can provide you with the necessary forms and their instructions.

MATCHING AND REPORTING UNDER SECTION 16 RULES

Event	Report on Form 4 (due by 2nd business day after event)	Report on Form 5 (due within 45 days of end of fiscal year)	Not Required to be Reported (3)
Grant to officer or director under Company's equity plan	Exempt (1)(2) Code A		
Exercise of option	Exempt acquisition of common stock and exempt disposition of option Code M		
Settlement of RSUs	Exempt Code A (see last column)		If initially reported as shares rather than derivative securities, no Form 4 triggered upon vesting
Cashless option exercise by officer or director through Issuer (by withholding shares or delivering previously held shares)	Exempt acquisition (of gross shares) Code M and exempt disposition (of shares tendered) Code F (1)		
Cashless option exercise through broker	Exempt acquisition (of gross shares) Code M Matchable sale (of shares sold) Code S		
Expiration of option for no value			Exempt disposition
Acquisition under Company's employee stock purchase plan			Exempt acquisition
Exercise of warrant	Exempt acquisition of common stock, and exempt disposition of warrant Code X		
Conversion of preferred stock	Exempt acquisition of common stock and exempt disposition of preferred Code C		
Stock dividend			Exempt acquisition
Transfer pursuant to domestic relations order			Exempt acquisition or disposition
Distribution from limited partnership to general partner			Exempt change in form of beneficial ownership
Distribution from	Matchable purchase		

Event	Report on Form 4 (due by 2nd business day after event)	Report on Form 5 (due within 45 days of end of fiscal year)	Not Required to be Reported (3)
limited partnership to limited partner	Code J		
Other acquisition from issuer, including receipt of securities in merger	Matchable purchase, if by 10% holder Code P Exempt acquisition, if by director or officer (1) Code A		
Acquisition from someone other than issuer	Matchable purchase Code P		
Sale to issuer or tender in connection with merger into another company	Matchable sale, if by 10% holder Code S Exempt disposition, if by officer or director (1) Code D		
Sale to someone other than issuer	Matchable sale Code S		
Gift	Exempt Code G		

(1) Assuming that the specific approval of the transaction required by Rule 16b-3 has been obtained or, in the case of an acquisition, the security is held at least six months or certain approvals are obtained.

(2) The grant must be reported at the time of exercise, if not already reported.

(3) Transactions that are not required to be reported as separate line items must be reflected in end-of-period holdings. Insiders may choose to indicate, by a footnote, that the report reflects the results of transactions which are not required to be itemized.

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Exhibit D

Internal Control Over Financial Reporting Compliance Dates

Accelerated Filer Status	Compliance Dates Regarding the Internal Control Over Financial Reporting Requirements	
	Management's Report	Auditor's Attestation
Newly Public Company	Second Annual Report	Second Annual Report (unless continue as Non-accelerated Filer)
Large Accelerated Filer OR Accelerated Filer	Required annually	Required annually
Non-accelerated Filer	Required annually	Exempt
Emerging growth company	Same as applicable category above	Exempt

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Exhibit E

Nasdaq Director Independence Criteria

Nasdaq Independent Director Criteria

"Independent director" means a person other than an executive officer or employee of the company [includes parents or subsidiaries] or any other individual having a relationship which, in the opinion of the company's board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. The following persons shall not be considered independent:

(A) a director who is, or at any time during the past three years was, employed by the company;

(B) a director who accepted or who has a Family Member who accepted any compensation [which can include indirect compensation such as consulting or personal service contracts or political contributions] from the company or any parent or subsidiary of the company in excess of $120,000 during any period of twelve consecutive months within the three years preceding the determination of independence, other than the following:

(i) compensation for board or board committee service;

(ii) compensation paid to a Family Member who is an employee (other than an executive officer) of the company; or

(iii) benefits under a tax-qualified retirement plan, or non-discretionary compensation.

Provided, however, that in addition to the requirements contained in this paragraph (B), audit committee members are also subject to additional, more stringent requirements under Rule 5605(c)(2) [i.e., not accept any consulting, advisory or other compensation from the issuer or be an "affiliated person" of the issuer or any subsidiary thereof].

(C) a director who is a Family Member of an individual who is, or at any time during the past three years was, employed by the company as an executive officer;

(D) a director who is, or has a Family Member who is, a partner in, or a controlling stockholder or an executive officer of, any organization to which the company made, or from which the company received, payments for property or services in the current or any of the past three fiscal years that exceed 5% of the recipient's consolidated gross revenues for that year, or $200,000, whichever is more, other than the following:

(i) payments arising solely from investments in the company's securities; or

(ii) payments under non-discretionary charitable contribution matching programs.

(E) a director of the company who is, or has a Family Member who is, employed as an executive officer of another entity where at any time during the past three years any of the executive officers of the company serve on the compensation committee of such other entity; or

(F) a director who is, or has a Family Member who is, a current partner of the company's outside auditor, or was a partner or employee of the company's outside auditor who worked on the company's audit at any time during any of the past three years.

NOTE: "Family Member" means a person's spouse, parents, children and siblings, whether by blood, marriage or adoption, or anyone residing in such person's home.