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June 6, 2002

Re: Proposed Corporate Governance Listing Requirements from the New York Stock Exchange and Nasdaq

To our Clients and Friends:

Several weeks ago, I wrote to you about the Business Roundtable's new Principles of Corporate Governance and noted that the chief executives' acceptance of what other groups have advocated as best practice would help move best practice into mainstream common practice. Now, the New York Stock Exchange and -- to a lesser degree -- Nasdaq have raised the bar, by proposing important new changes to their corporate governance listing standards.

The NYSE proposals, contained in a report released today by the New York Stock Exchange's Corporate Accountability and Listing Standards Committee (available at http://NYSE.com), would raise the floor on governance practices significantly by embodying in listing standards a number of what have been -- up to now -- best practice recommendations. These include requirements that boards be comprised of a majority of independent directors, that key board committees be comprised only of independent directors, and that boards regularly convene "executive sessions" for non-management directors. The proposals call for disclosure of the identity of the director that will preside over executive sessions. In addition, the NYSE proposals would require listed companies to adopt and disclose corporate governance guidelines and ethical codes of conduct.

The NYSE proposal would also impose explicit responsibility on the CEO to ensure fair and accurate financial disclosure by requiring that the CEO certify annually to the NYSE the completeness and accuracy of such disclosures. The proposal appears designed to motivate CEOs to set the "tone at the top" and insist -- as many already do -- on a zero-tolerance policy for improprieties at all levels of corporate management.

The NYSE proposal would also require shareholder approval for *all* equity-based compensation plans, including broad-based plans. This proposal has already been criticized, according to news reports.

Overall, the NYSE proposals call for more comprehensive reforms than the recently issued Nasdaq reforms. However, Nasdaq's Listing and Hearing Review Council is now considering various rule changes that would more closely track NYSE's proposed standards.

The NYSE and Nasdaq proposed rule changes, if adopted, will set new minimum standards for corporate governance and "best practice" will likely evolve as well. Listed companies should review their current practices and determine whether changes are called for.

A summary of the NYSE proposals, and a chart comparing the NYSE proposals to Nasdaq's proposals and the Business Roundtable guidelines, are attached.

If you would like more information on these issues, please don't hesitate to call me or my partners, Holly J. Gregory (212-310-8038) or Robert L. Messineo (212-310-8835).

Ira M. Millstein

NYSE Listing Proposals At a Glance

- **Emphasizing tone at the top and CEO's role in control and enforcement.**
  - The CEO must certify each year that the Company has established and complied with procedures for verifying the accuracy and completeness of information provided to investors and that he or she has no reasonable cause to believe that the information provided to investors is not accurate and complete. The CEO must also certify that he or she has reviewed with the board those procedures and the company's compliance with them.
  - The CEO must certify each year that he or she is not aware of any violations of the NYSE listing standards.
  - Upon finding a violation of an Exchange listing standard, the NYSE may issue a public reprimand letter to any listed company and ultimately suspend or de-list an offending company
  - The SEC should require CEOs to certify to shareholders that, to their best knowledge and belief, their companies' financial statements and disclosures fairly present the information that reasonable investors should have to make informed investment decisions.

- **Increasing the role and authority of independent directors.**
  - Independent directors must comprise a majority of the board.
  - Boards must convene regular "executive sessions" for non-management directors to meet without members of management present.
  - Independent directors must designate and publicly disclose the name of the director who will preside at the executive sessions.
  - Companies must have an audit committee, a nominating committee and a compensation committee, each comprised solely of independent directors.
  - The chair of the audit committee must have accounting or financial management experience.
  - Audit committees must have sole responsibility for hiring and firing the company's independent auditors, and for approving any significant non-audit work by the auditors.

- **Tightening the definition of "independent" director and adding new audit committee qualification requirements.**

  - For a director to be deemed "independent," the board must affirmatively determine that the director has no material relationship with the listed company.

  - For determining director independence, a five-year "cooling-off" period should apply to former employees of the Company, or of its independent auditor; for former employees of any company whose compensation committee includes an officer of the Company; and for immediate family members of the foregoing.

  - Director's fees must be the sole compensation an audit committee member receives from the listed company.

  - An audit committee member associated with a major shareholder (one owning 20% or more of the listed company's equity) may not vote in audit committee proceedings.

- **Fostering a focus on good corporate governance.**

  - Companies must adopt and disclose Corporate Governance Guidelines that address:

    - Director qualification standards

    - Director responsibilities

    - Director access to management and, as necessary and appropriate, independent advisors

    - Director compensation

    - Director orientation and continuing education

    - Management succession

    - Annual performance evaluation of the board

  - Companies must adopt charters for their audit, compensation and nominating committees.

  - Companies must adopt and disclose a Code of Business Conduct and Ethics for directors, officers and employees that addresses:

    - Conflicts of interest

    - Corporate opportunities

    - Confidentiality
    - Fair dealing
    - Protection and proper use of company assets
    - Compliance with laws, rules and regulations (including insider trading laws)
    - Encouraging the reporting of any illegal or unethical behavior
  - Companies must promptly disclose any waivers under the Code of Business Conduct and Ethics given to directors or officers.

- **Giving shareholders more opportunity to monitor and participate in the governance of their companies.**
  - Shareholders must be given the opportunity to vote to approve or disapprove all equity-based compensation plans; brokers may only vote customer shares on proposals for such plans pursuant to customer instructions.
  - Listed companies must publish codes of business conduct and ethics, and key committee charters. Waivers of such codes for directors or executive officers must be promptly disclosed.
  - Listed foreign private issuers must disclose any significant ways in which their corporate governance practices differ from NYSE listing standards.

- **Improving the education and training of directors.**
  - Listed companies are urged to establish an orientation program for new board members.
  - The NYSE plans to develop a Directors Institute with leading authorities in corporate governance.

Comparison of Selected Corporate Governance Reform Proposals

OVERVIEW		
BRT Principles	**NYSE**	**Nasdaq**
The Business Roundtable ("BRT") issued Principles of Corporate Governance on May 14, 2002. The BRT is an association of CEOs of leading corporations with a combined workforce of more than 10 million employees in the United States and $3.5 trillion in revenues. It is recognized as an authoritative voice on matters affecting American business corporations and, as such, is particularly interested in corporate governance. The Principles describe best practices for corporate management and boards of directors to consider in their efforts to implement corporate governance. The Principles are also intended to serve as guideposts for public dialogue on evolving governance standards. Adoption of the best practices recommended in the BRT Principles is completely voluntary.	On June 6, 2002, the New York Stock Exchange Corporate Accountability and Listing Standards Committee released a report to the NYSE's board of directors proposing a variety of new comprehensive corporate governance listing standards. If the proposals are adopted, the NYSE would sanction companies that violate the new listing standards by issuing a public reprimand letter. Companies that flagrantly or repeatedly violate NYSE listing standards could be suspended or delisted.	In an April letter to SEC Chairman Harvey Pitt, the Nasdaq Listing & Hearing Review Council (Council) recommended a series of corporate governance reform proposals. Based on this letter Nasdaq's board of directors approved a series of rule changes on May 24, 2002. Later this month, Nasdaq will consider approving additional rule changes also based on the April letter to the SEC. Companies in violation of the listing rules could be delisted.

Corporate Governance Code of Conduct or Code of Best Practice		
BRT Principles	**NYSE**	**Nasdaq**
The BRT recommends that each corporation's corporate governance committee develop and recommend a set of corporate governance principles applicable to the corporation and to the board. The board's corporate governance committee should be composed entirely of independent directors.	The NYSE would require companies to adopt governance guidelines, codes of business ethics, and charters for their audit, compensation, and nominating/governance committees. The governance guidelines would address many key governance issues, including director qualification standards, director compensation, board evaluation procedures, management succession, and requirements for annual board self-evaluations. Codes of business ethics would address topics such as conflicts of interest, corporate opportunities, confidentiality, fair dealing, compliance with legal requirements, and the reporting of illegal or unethical behavior. Any waiver of the company's code of business ethics for officers and directors would have to be made by the board or board committee and then promptly disclosed to shareholders. The proposed listing standards would require that a board's corporate governance committee be composed entirely of independent directors.	In an April letter to SEC Chairman Harvey Pitt, the Nasdaq Listing & Hearing Review Council (Council) recommended that all listed corporations adopt a code of conduct, addressing conflicts of interest and compliance with legal requirements, and implement board-approved procedures for monitoring compliance with the code. Later this month, the Council will examine increasing the use of corporate codes of conduct and compliance methods to support them. It is unclear whether it will recommend changes that are consistent with the letter it sent to Chairman Pitt.

INDEPENDENCE		
BRT Principles	**NYSE**	**Nasdaq**
The board should be composed of a substantial majority of directors who are independent of management, both in fact and in appearance. The BRT recommends that audit, compensation, and nominating/ governance committees be composed entirely of independent directors. An independent director is a director who is free of any relationship with the corporation or management that would impair his or her ability to make independent judgements. Although SRO requirements on audit committees can provide guidance in determining whether a director is independent, the board should look beyond the familial, employment, and business relationships, and focus on other relationships, including personal relationships between potential board members, senior management, and not-for-profits receiving support from corporations. The BRT suggests this be done on a case-by-case basis. The BRT believes that "most American corporations are well served by a structure in which the CEO also serves as chairman of the board." However, it emphasizes that each corporation make that decision for itself. The BRT does not discuss independent board leadership.	The NYSE would require that boards be composed of a majority of independent directors. The new proposals would require the board's audit, compensation and nominating/governance committees to be composed entirely of independent directors. Current NYSE requirements define director independence solely for audit committee members. The new requirements would apply to all directors. Under the new definition, no director would be considered independent if the board determined that that director had a material relationship with the listed company. Material relationships can include charitable and familial relationships, as well as legal, consulting, and a variety of other business relationships. In addition, the NYSE would prohibit any of the following directors from being deemed independent until five years after the termination of their employment: ▪ former employees of the listed company (current rules require a three year cooling off period); ▪ former employees or other affiliates of the listed company's present or former auditor or an affiliate of that auditor; ▪ directors who have been a part of an interlocking directorate in which the CEO or another executive officer of the company serves on the compensation committee of another company that employs that director; and ▪ a family member of any of the directors described above. The NYSE would require non-executive directors to hold regularly scheduled meetings without the presence of management. The independent directors must designate and disclose in the company's annual proxy statement the name of the director who will preside at these meetings. The stated purpose behind this requirement is to facilitate direct communication between independent directors and shareholders and employees.	At the end of June, Nasdaq's Listing Hearing and Review Council will consider whether to recommend that Nasdaq require the boards of listed companies to be composed of a majority of independent directors. The Council will also consider whether to require that compensation committees be composed entirely of independent directors. Current Nasdaq listing requirements define director independence for audit committee members. On May 24, 2002, Nasdaq's board of directors approved a rule change extending the current prohibition on independent directors from receiving more than $60,000 in compensation to include any payments, including political contributions, in excess of that amount to either a director or a director's family member. In addition, directors will not be considered independent if the corporation contributes the greater of $200,000 or five percent of either the corporation's or charity's gross revenues to a charity where the director is an executive officer.

<table>
<tr><th colspan="3">AUDIT COMMITTEES & AUDITORS</th></tr>
<tr><th>BRT Principles</th><th>NYSE</th><th>Nasdaq</th></tr>
<tr><td>The BRT suggests that the audit committee is responsible for retaining the corporation's outside auditor and for ongoing communications with the auditor. According to the BRT, the audit committee should consider whether the auditor is actually independent from the corporation and develop policies concerning the provision of non-audit services by the outside auditor. The BRT believes that individual corporations should decide for themselves whether rotations are needed or if the performance of both auditing and consulting services by the outside auditor is inconsistent with independence.</td><td>Current NYSE rules require that audit committees be composed of entirely independent directors. However, the proposed listing standards would add the following to the independence requirement:
▪ audit committee members cannot receive compensation from the company other than director's fees;
▪ a director who meets the definition of independence for audit committee members, but holds 20% or more of the company's stock (or who is a general partner, controlling shareholder or officer of any such holder) cannot chair, or be a voting member of, the audit committee; and
▪ the audit committee chair would be required to have accounting or related financial management expertise.

Current NYSE listing standards require the audit committee charter to provide that the selection, evaluation and firing of the independent auditor is subject to the "ultimate" authority of the committee and the board of directors. If adopted, the new listing requirements would grant the audit committee the sole authority to hire and fire independent auditors, and to approve any significant non-audit relationship with the auditor or its affiliates.</td><td>The Nasdaq board approved a rule change that expands the conflict of interest review requirement to require that the audit committee or a comparable body of the company's board of directors review and approve all related-party transactions.

The new rules would also require auditors to issue a press release to investors if the auditor concludes that substantial doubt exists regarding the company's ability to continue as a going concern for a reasonable period of time.

Current Nasdaq rules require audit committees to have a charter providing the committee and board with the "ultimate authority and responsibility to select, evaluate, and where appropriate, replace the outside auditor." Later this month, Nasdaq will consider whether to adopt requirements that expand the authority of audit committees.

Nasdaq will also consider adopting a cooling off period during which former auditors would be precluded from serving on corporate audit committees.</td></tr>
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Director Compensation		
BRT Principles	**NYSE**	**Nasdaq**
Boards should obtain shareholder approval of new stock option and restricted stock plans in which directors or executives participate.	Both the NYSE and Nasdaq have rules requiring shareholder approval of the adoption of certain stock option plans and purchase plans, with an exception for broadly based plans, which can include officer and director participation. Under the proposed NYSE listing standards, shareholder approval of all equity compensation plans would be required. In addition, a broker would be precluded from voting a customer's shares on any equity-compensation plan, unless the broker is instructed by the customer to do so.	The Nasdaq board approved a rule change under which shareholder approval would be required for all plans that include officers and directors. In addition, although the board decided to preserve an exemption allowing listed companies to provide inducement grants to new executives, such grants would now be conditioned on the approval of either the corporation's independent compensation committee or a majority of independent directors. An exception for Employee Stock Ownership Plans (ESOP) and rights and warrants offered generally to all shareholders was also retained.

REQUIREMENTS FOR FOREIGN ISSUERS		
BRT Principles	**NYSE**	**Nasdaq**
Not covered.	The NYSE would require foreign companies to disclose significant differences between their corporate governance practices and those followed by listed domestic companies. The NYSE report recommends that the NYSE work with its counterparts across the globe to establish global governance principles that could be implemented by global companies no matter where they are located.	Later this month, the Council will consider whether to recommend a rule change that would require foreign companies to disclose whether they have received a waiver of Nasdaq's corporate governance listing requirements.

CEOs and Management		
BRT Principles	**NYSE**	**NASD**
The BRT believes that senior management, especially the CEO, should set a "tone at the top" establishing a culture of legal compliance and ethical behavior for personnel at all levels of the corporation. The CEO should take responsibility for the company's adherence to the highest ethical standards. The BRT recommends that companies put in place effective systems of internal controls that provide reasonable assurance about the accuracy of the company's books and records, the safety of its assets, and its compliance with legal requirements. This system should be evaluated and updated periodically.	If adopted, the NYSE's proposed requirements would require CEOs to: ▪ certify annually to the NYSE that the company has established and complied with procedures for verifying the accuracy and completeness of the information provided to investors; ▪ certify that he or she has no reasonable cause to believe that this information is inaccurate or incomplete; ▪ annually review with the company's board of directors these procedures and the company's compliance with them; and ▪ certify that he or she is not aware of any violations of the NYSE's listing standards. In addition, the Committee recommends that the SEC require CEOs to certify to shareholders, that to the best of their knowledge and belief, their companies' financial statements and disclosures fairly present the information needed by reasonable investors to make informed investment decisions.	Not covered.