

# Client Alert

A report  
for clients  
and friends  
of the firm     May 2004

## Reminder: Listed Companies to Submit New Corporate Governance Certifications

In compliance with various corporate governance standards required by the Sarbanes-Oxley Act of 2002, the Nasdaq Stock Market ("Nasdaq"), the New York Stock Exchange (the "NYSE") and the American Stock Exchange (the "Amex") each now require listed companies to file certification forms, all of which are available on the Internet. In order to assist our clients with adhering to the current rules, we have prepared the following brief summary of these requirements. Please note that listed companies have a separate ongoing obligation to promptly notify the listing organization after an executive officer becomes aware of any material noncompliance with the relevant corporate governance rules.

### **Nasdaq: Corporate Governance Certification Form ("Certification Form")**

The Certification Form is applicable to all listed companies, whether on the National Market or SmallCap Market, and addresses compliance with requirements concerning audit committee composition, the charters of both the audit committee and the nominating committee, executive sessions and code of conduct. The filing deadline for the Certification Form is immediately following the listed company's next annual meeting after January 15, 2004, but no later than October 31, 2004. Foreign private issuers and Form SB filers do not have to submit the Certification Form until July 31, 2005. You may obtain the Certification Form at [www.nasdaq.com](http://www.nasdaq.com). Scroll down the left sidebar menu to the "Listed Companies" heading and click on "Legal & Compliance." Under the "Rules and Interpretations" heading, select "Recent Rule Changes." Finally, scroll

down to "Resources" and click on "Corporate Governance Certification Form."

### **The New York Stock Exchange: Section 303A Annual Written Affirmation ("Annual Affirmation"); Exhibit G to Annual Written Affirmation ("Exhibit G"); Annual CEO Certification**

The NYSE's Annual Affirmation certifies compliance with rules relating to the independence of a majority of the board, the composition and charter of each of the nominating/corporate governance, compensation and audit committees, code of ethics, and other governance matters. It must be submitted by the earlier of 30 days after the listed company's next annual shareholders' meeting following January 15, 2004, or October 31, 2004, and within 30 days of each annual shareholders' meeting thereafter. Exhibit G is a mandatory attachment to the Annual Affirmation that must be executed in accordance with its accompanying instructions. Since the purpose of Exhibit G is to specify where the public disclosures required by Section 303A may be found, completing this form likely requires additional time, and it is in your best interest to review it as soon as possible. Finally, the CEO of each listed company must certify annually that he or she is not aware of any violations of the NYSE's corporate governance requirements. The Annual CEO Certification must be submitted simultaneously with the Annual Affirmation.

### **Section 303A Interim Written Affirmation ("Interim Affirmation")**

The Interim Affirmation only may be used after the Annual Affirmation first is filed with the NYSE. An Interim Affirmation must then be promptly submitted after: (i) certain changes in board and committee composition; (ii) a change in a director's status with respect to independence; and (iii) the company is no longer a "Controlled Company" for purposes of Section 303A. Please note that if changes are made to the composition of the audit committee prior to the first filing of the Annual Affirmation, the preexisting Section 303 Annual/Interim Written Affirmation should be used to disclose that information.

All required NYSE forms are available at [www.nyse.com](http://www.nyse.com). Look for the Corporate Governance section on the bottom right side of the screen and click on "Corporate Governance Forms" for a list of active links to all the documents, including instructions for completing and filing the forms.

### **The American Stock Exchange: Corporate Governance Certification ("Governance Certification")**

The Amex requires a certification of compliance with rules relating to the audit committee, board composition and nominations, executive compensation, executive sessions of independent directors, code of conduct and ethics, and notification requirements. A listed company must submit a Governance Certification immediately following its first annual shareholders' meeting after March 15, 2004, but in no event later than October 31, 2004. Foreign private issuers and small-business filers are required to submit the Governance Certification by July 31, 2005. You can obtain the Governance Certification at [www.amex.com](http://www.amex.com). Just scroll down to the "Spotlight" section on the lower right side of the screen and click on "Enhanced Corporate Governance Rules (Updated 4/26/04)." Next, click on the download button beside the "Listed Company" option at the top of the screen.

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#### **Client Alert**

Proskauer's Corporate Governance and Defense Practice consists of a multidisciplinary team of attorneys from our Corporate and Litigation practices, including renowned experts and former SEC and US Attorneys, who bring to bear considerable sophisticated expertise to serve your needs. The following individuals serve as the contact persons and would welcome any questions you might have.

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